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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 17 April 2013

# Journal des débats (Hansard)

Mercredi 17 avril 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qadri  
Clerk: Tamara Pomanski

Président : Shafiq Qadri  
Greffière : Tamara Pomanski



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 17 April 2013

Mercredi 17 avril 2013

*The committee met at 1516 in committee room 1.*

## MEMBERS' PRIVILEGES

## OFFICE OF THE AUDITOR GENERAL

**The Chair (Mr. Shafiq Qaadri):** Ladies and gentlemen, colleagues, the committee is now officially in session: as you know, a justice policy hearing about energy infrastructure.

We have a special guest, by invitation only, who will be sworn in momentarily: Jim McCarter, Auditor General of Ontario.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Jim McCarter:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. McCarter. Just before I offer you the 10 minutes of introductory remarks, I would just like to notify the committee, and beyond that, all Ontarians, that this is your final two weeks in the service of the people of Ontario, and I think you deserve some applause for that.

*Applause.*

**The Chair (Mr. Shafiq Qaadri):** I'd invite you now, sir, to—yes, Mr. Fedeli?

**Mr. Victor Fedeli:** What's the order today?

**The Chair (Mr. Shafiq Qaadri):** The order will be that you will be first, Mr. Fedeli, and then it will follow from there—

**Mr. Victor Fedeli:** And the time? Is it 20—

**The Chair (Mr. Shafiq Qaadri):** Twenty-minute rotations, yes. Precisely the same.

**Mr. Victor Fedeli:** I didn't see any instructions.

**The Chair (Mr. Shafiq Qaadri):** They were implied.

Mr. McCarter, I would invite you to begin your 10-minute commentary. Again, to notify the committee, this is the last report that you're presenting to the province. Please go ahead.

**Mr. Jim McCarter:** Yes, it will be the last report.

I'd like to thank the committee for giving me the chance to appear here today. I understand it's a special meeting, so I do appreciate the interest shown in the work of my office.

I'm just wondering: Would it be possible for me to have one of my colleagues sit up beside me?

**The Chair (Mr. Shafiq Qaadri):** He's welcome. I presume the committee won't have any objection. He will need to be sworn in, though.

**Mr. Jim McCarter:** Okay. Mr. Chagani.

**The Chair (Mr. Shafiq Qaadri):** Is this succession planning, I take it, Mr. McCarter?

**Mr. Jim McCarter:** No, he'll be handling the tough questions.

**The Chair (Mr. Shafiq Qaadri):** All right, fair enough. We need his first name and last name and to be sworn in.

**Mr. Gus Chagani:** It's Gus Chagani.

**The Chair (Mr. Shafiq Qaadri):** Into the microphone.

**Mr. Gus Chagani:** Gus Chagani.

**Mr. Jim McCarter:** That's C-H-A-G-A-N-I, for Hansard.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Gus Chagani:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Only for you, Mr. McCarter, the clock is restarted.

**Mr. Jim McCarter:** Thank you, Chair.

With respect to opening remarks, I have to be honest: Because I didn't find out until just before 5 that I was going to have the pleasure of appearing before you today, and I've been in the Standing Committee on Public Accounts all day, I don't have any opening remarks that I prepared especially.

However, I guess I would give the committee an option. I could read the opening remarks that I had to the media a couple of days ago in my news conference—although I believe there are a couple of members who have already heard it—or I'm happy to go right into questions. I guess I would leave it to the committee members whether they'd like me to go right into questions, which I'm happy to do, or I could read the opening comments that I had to the media, which would—

**The Chair (Mr. Shafiq Qaadri):** Mr. McCarter, you're going to start too much of a debate. I'd invite you to decide yourself, please.

**Mr. Jim McCarter:** Okay. In that case, why don't I read the opening remarks that I had to the media?

In performing any value-for-money audit, we usually try to answer many questions. In the case of this audit,



the public accounts committee of the Legislature basically asked my office to answer one question. They asked me, "What's the bottom line? How much will it really cost to cancel the Mississauga power plant and move it to Lambton county, near Sarnia?"

Our work suggests the bottom line is about \$275 million, and that's our estimate of the total out-of-pocket cost to Ontario taxpayers and electricity users. Much of this has already been paid out, and the remainder will come out of hydro bills for the next two decades or so.

However, it is important to remember that our figure is an estimate, because we had to include assumptions about the future.

1520

In essence, given that the construction of the Mississauga plant was estimated to cost slightly less than \$275 million, and we still have to pay for the Lambton plant, the people of Ontario will have essentially paid for two power plants but have gotten just one.

Although the Liberal Party announced two weeks before the October 6, 2011, election that it would relocate the plant, construction continued well past the election. This put the government in an untenable position, and it instructed the Ontario Power Authority to move urgently to get the builder to down tools and to permanently stop construction on a project that was already well under way. This put the builder in a strong bargaining position in the months of negotiations leading up to the signing of the relocation agreement in July 2012.

It's our sense that the OPA made the best of a difficult negotiating situation and tried hard to relocate the plant at the lowest possible cost to the people of Ontario. But it is also our sense that the outcome of that negotiation definitely favoured the builder and its US-based lender. In fairness, it's important to remember that the builder did have a legally binding contract to put up a power plant. Had the government arbitrarily refused to compensate the builder, or set compensation at an arbitrary, non-negotiable amount, it would have opened itself up to lawsuits and would have had trouble negotiating future construction contracts with suppliers.

So the question was never whether the builder should be compensated, only how much should it cost to "make the builder whole again," in the language of the lawyers. It seems like the answer was, "A lot." We were concerned, for example, with the payout of \$150 million to the US-based lender that provided the builder with a line of credit to fund the construction of the Mississauga plant—a line of credit, I might add, that came with a steep 14% interest rate.

While \$60 million of this \$150 million was to repay funds already advanced to the builder, most of the \$90-million balance related to penalty fees for cancelling the project. We were surprised at the magnitude of these penalties and were advised that, as part of the negotiations to halt construction, the OPA did agree to cover all the builder's financing costs, including any penalties for early termination on the line of credit.

The OPA did ask for a look at the agreement with the lender before it agreed to this, but the builder refused to

allow it. Despite this, and undoubtedly due to the urgency to get construction stopped, the OPA agreed to cover the financing costs anyway, but they never expected them to be anywhere near this high.

In addition to covering financing costs, the province reimbursed the builder \$43.8 million for sunk costs—basically, money the builder had already put into the project but couldn't otherwise recover. More than 80% of this refund was for labour costs the builder claimed to have incurred. Neither we nor the engineer engaged by the OPA to review all such costs were able to obtain complete supporting documentation for all of these costs. The engineer did certify them as reasonable, but only a number of months after they were paid.

We also noted that in order to settle an old lawsuit on an unrelated matter, the builder was able to get the government to pay them what we felt was about \$8 million more than they otherwise would have been entitled to. Comparatively speaking, this is a relatively small amount, but it is indicative of the extra costs arising from the difficult negotiating position the OPA found itself in.

The OPA also repaid the builder's suppliers for amounts owed, including \$3 million in equipment rental charges that the builder racked up by not returning rented construction equipment until more than a year after construction had stopped. This occurred even though the OPA was aware months earlier that this equipment should have been returned by the builder.

In total, there were about \$350 million in costs associated with the cancellation and relocation. But there were also offsetting savings of about \$76 million. The first savings related to the relocated plant being able to make use of some equipment and engineering work from the Mississauga site, paid for by the OPA. In recognition of this, a slightly lower rate was negotiated for electricity to be generated by the Lambton plant. This lower rate, however, was not low enough to fully recover the value of these items. Secondly, if the Mississauga plant had gone ahead as originally planned, the province would have started paying for its power as soon as it began production. Even though the OPA has said the province wouldn't have needed this electricity for the first three years, it still would have been obligated to pay for it, but now it won't. We estimated the combined value of these two savings to be about \$76 million.

From Greenfield's perspective, regardless of what the demand for electricity is in future years, they will benefit. If the Lambton plant is built and starts generating electricity, Greenfield will save an estimated \$65 million in natural gas transportation costs because the new plant is so much closer to the supplies of the gas. But if it turns out the Lambton plant is not built because the government determines that it doesn't need the power in the foreseeable future, Greenfield will, at a minimum, reap a \$45-million windfall, as it will be allowed to keep this money that was loaned to it as part of the negotiated settlement.

Those are my opening remarks, Chair, and I now welcome any questions committee members might have.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. McCarter. As you know, it'll be by rotation: 20 minutes each, beginning with Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. Auditor, thank you very much for an illustrious career in the public service. We've always watched you from afar, and I must say it has been rather enjoyable to watch you here in person over the last 15 months.

**Mr. Jim McCarter:** I thank you. That's gratifying. The auditor doesn't get too many pats on the back, so it's good to hear.

**Mr. Victor Fedeli:** I'm quite certain that's a very, very true statement.

Auditor, I want to read two sentences from estimates committee, where then-Minister Dwight Duncan was being questioned by Gilles Bisson from the NDP. They've gone back and forth several times here, and they finally got down to the fact of \$180 million and \$10 million. The question from Mr. Gilles Bisson—this is July 19, by the way—"We're not expected to be on the hook for any more money than what has already been announced for the Mississauga gas plant relocation?"

Duncan: "That's correct. The relocation is \$180 million. The \$10 million is apart from the relocation." So we know that he's referring to the \$190 million.

The next question is: "Is the government, beyond the \$180 million, expecting to have to pay for anything else in order to settle this particular issue with the constructor?"

Dwight Duncan: "Not the relocation—"

Mr. Bisson: "What about any penalties?"

Dwight Duncan: "Not that we're aware of."

So this is July 19. When you first outlined your statements to the media on Monday, you said that in July—and I didn't write a day down—the OPA had already paid over \$245 million. Do you know when the OPA would have either committed or had paid the \$245 million?

**Mr. Jim McCarter:** Just by way of background, what I did say at the media conference—I was asked a similar question. I don't know how the minister came up with \$190 million, but what I do know is what the OPA knew by early July, when the minister basically made that comment.

Another way of looking at the \$275 million is you've got about \$150 million that was paid to EIG, you've got about \$110 million that was paid to the suppliers, and you've got about another \$15 million that was a combination of the Keele Valley settlement and legal fees. So there's about \$15 million there. That's about \$275 million. On the other side of the ledger, there are a couple of offsetting items. There is \$76 million in savings, and there is \$76 million in extra costs going down the road, like line loss and that sort of stuff.

But if you look at the \$275 million of hard costs, by early July, about 85% had actually been paid by the OPA, and I think that was the \$240 million or \$245 million.

They also knew at that time that they were going to have to pay upwards of I think it was about \$268 million—that they were going to have to pay that. I think there were \$6 million or \$7 million that kind of came in sort of after the fact that they wouldn't have known about.

That's basically the comment that we know, but we can only speak to what the OPA knew in early July.

**Mr. Victor Fedeli:** How early in early July?

**Mr. Jim McCarter:** My sense would be that they had paid most of the \$245 million in the months preceding, because in November, once they basically were able to get the builder to stop construction—and there was a series of 10 interim agreements. Again, payments would have been made throughout that time basically to pay suppliers, because the suppliers would be saying, "I don't want to wait for you guys to finish your negotiations. I want my money." Those payments would have been made over a period of time during that period.

1530

**Mr. Victor Fedeli:** A little later in your discussion, you talked about the changing of language from "total cost" to "cost to taxpayer" and "cost to ratepayer." Can you just outline—I wrote notes, but I was writing fast in the room.

**Mr. Jim McCarter:** We looked at that too. We took the perspective of total cost being that it didn't really matter whether it's coming out of your right-jeans-taxpayer pocket or whether it's coming out of your left-jeans-ratepayer pocket. We felt that the intent of the committee's motion was what are the total costs that we're going to pay, and we have future costs that are going to be incurred down the road. We took that perspective.

I did look back to the announcement that was made by the minister when he talked about the \$180 million. He did talk about total cost, period. However, subsequent to that, in the Legislature, the reference is always to the total cost to the taxpayer.

**Mr. Victor Fedeli:** Yes, we checked those both as well. We concur with you that in the original discussion, the \$180 million was deemed to be total, and it changed—I call it a subtle change—to "cost to taxpayers." Is that correct?

**Mr. Jim McCarter:** I think so, but perhaps—I was quite interested—when the Deputy Minister of Energy was here before you, that issue was raised, and it was in connection to the Oakville plant, but essentially what he was saying is the \$40 million would be the cost coming out of the consolidated revenue fund, which would be the cost to taxpayers. We were aware that there could be other costs associated with this but they would be paid by the ratepayers. That could be part of it.

But I have to be honest: I don't know, basically, how the decision to come up with the \$90 million was, although when Ms. Butler was before you—

**Mr. Victor Fedeli:** You mean the \$190 million.

**Mr. Jim McCarter:** The \$190 million. When Ms. Butler was before you, from the OPA, I think what she



said was, in essence that was a rough estimate at that time of the sunk costs that we felt were non-repurposeable, in the sense that they couldn't be transferred to Lambton.

It could be, too, that the OPA felt there would be some extra costs, but they may have also felt there would be higher savings than what we felt, that would offset those. But on the other hand, things like the gas management cost, I think they underestimated that. I think the Deputy Minister of Energy kind of conveyed, perhaps, how they were looking at it, but I confess to that being somewhat speculation on my part.

**Mr. Victor Fedeli:** Okay. I don't want to put words in your mouth—not that I ever could. The \$190 million, then, that has been used consistently by the government: Did you start with that number, or would that number have made no—I won't use the word "sense" to you.

**Mr. Jim McCarter:** I know where you're headed. We started with a clean whiteboard, and we basically said—we didn't say, "Let's look at the \$190 million and let's try to verify that or disprove that." We basically started with a clean page of paper and tried to build up what all the costs were that we felt could go into it.

**Mr. Victor Fedeli:** So you don't concur with the \$190 million in any way, shape or form, Auditor? Or is there—

**Mr. Jim McCarter:** My sense—I think that the total cost to taxpayers and ratepayers—I don't think it will be exactly \$275 million; it could be \$260 million or it could be \$290 million, but I am pretty certain that it will exceed \$190 million. Our best estimate was \$275 million, but quite frankly, there are some future estimates built into that. It could be \$260 million, it could be \$290 million, but I think it will be higher than \$190 million.

**Mr. Victor Fedeli:** That's actually funny you say that, because Dwight Duncan uses almost similar language. I don't have that one highlighted. He said, "If it's not \$180 million, it's going to be \$178 million or \$182 million." It's just funny that you mention that. They were really hung up on the number of \$190 million.

I want to talk to you about one other aspect that you said, and we'll probably stretch this one out. You said there were 10 side deals. Was I right to write the number 10 down?

**Mr. Jim McCarter:** I think the number was about 10—10 interim side agreements that were between the original agreement, to get them to down tools in November, and the time they finally finished the negotiations. Actually, it did end up that it wasn't the OPA that finished the negotiations. By the time they brought in Mr. Prichard to finish the negotiations, I think there were 10 side agreements.

**Mr. Victor Fedeli:** Okay. So can you run through them? We have 11 minutes, so can you take a minute on each one? I don't know how you could. Why don't you talk about the most salient ones, at least? Let's talk about a couple of them, if you don't mind.

**Mr. Jim McCarter:** Okay. I'm glad that Mr. Chagani is prepared here. Basically, the 10 side agreements—the first one talked about suspending work by November 25.

Then one of them was just an extension to extend it to December 16. The next one talked about: Greenfield wanted some indemnity obligations. They were concerned that they were being sued, so basically there was a side agreement giving Greenfield a number of indemnities.

The fourth side agreement was that they would pay them an advance of about C\$10 million for working capital in connection with the Keele Valley settlement. I talked about that in my report. Our understanding of the Keele Valley settlement is that, even though it was unrelated, Greenfield more or less said, "We're not even sitting down at the negotiating table unless we get this Keele Valley settlement resolved. Basically, we want \$15 million."

**Mr. Victor Fedeli:** I want to talk about that one for a sec because that's one document we did have, Auditor. I have been in the Legislature and in estimates committee asking about this over and over, and everybody just rolled their eyes, like "there goes Vic with one of those wacky ideas." Let me just put it in my words, and you can tell me whether this is right or not.

It's one of my wacky ideas that there was a \$7-million lawsuit that Greenfield had that was unrelated to the Mississauga gas plant. They insisted that the government pay them \$15.4 million to settle it, plus forgive their \$700,000 in costs. The government came up with \$10 million in a cash payment, which was announced by Minister Duncan. That's the \$180 million and the \$10 million and the \$5.4 million is this NUG contract that I have talked about that everybody rolls their eyes, that says here, "It's for a power contract that we don't need power for, and if we don't need power, then you keep the \$5.4 million."

Auditor, am I somewhat accurate in that expression?

**Mr. Jim McCarter:** I think you're accurate with respect to the numbers that the judge initially—I mean this was an ongoing lawsuit, but at the end—

**Mr. Victor Fedeli:** Yes, it's an unrelated lawsuit to this—

**Mr. Jim McCarter:** It's unrelated; it's Keele Valley. The first case came down, and the judge said, "I'm not going to order any damages, and not only that, Greenfield has got to pay \$700,000 in costs to OEFC." Greenfield said no. They went back and they said, "Either we want a new trial, or we want \$8 million." The judge that ruled on that basically said, "You might be entitled to \$7 million," but ordered a new trial, and that's sort of where it stood.

When the cancellation came up, Greenfield ended up saying, "We want \$15 million." OEFC, Ontario Electricity Financial Corp., our understanding is what they said is, "We are only paying \$10 million maximum." So the OPA stepped up to the plate and paid the balance, the \$5-point-whatever it was million, and OEFC forgave the \$700,000 in costs that they were supposed to be reimbursed. My understanding is that was really part of Greenfield sitting down and saying, "Okay. Let's work out something, or we'll down tools and stop construction."



**Mr. Victor Fedeli:** So the \$15.4 million that was paid, \$7 million for the lawsuit, \$3 million on top of that for the \$10 million, to satisfy that?

**Mr. Jim McCarter:** We really looked at what was the cost, and we had to come up with what's an—

**Mr. Victor Fedeli:** Let me ask, are you as incensed about the \$5.4 million as I am? Let me ask you that, just flat out.

**Mr. Jim McCarter:** That would probably not be the language that I might want to use. We looked at it, and we just said we think that the judge—one judge said, "You're probably entitled to nothing, but I'll order a new trial. Not only that, the other party has to pick up costs." The second judge looked at and said, "You might be entitled to \$7 million. I'm going to order a new trial."

So we had to say, "What do we think would be the extra costs associated with this?" We said, "We think maybe you might have had to pay \$7 million," but we said, "We think the extra costs associated with having to sit down at the bargaining table were \$8 million."

**Mr. Victor Fedeli:** I'm referring to the \$5.4 million, how that was paid off. That's the one I'm asking about in terms of the incense.

**Mr. Jim McCarter:** Basically, the OEFC said, "All we're willing to pay is \$10 million." The OPA stepped up to the plate and said, "Okay, we're under marching orders to get this construction stopped, and if need be, we'll pay the \$5 million," saying to us, "Rest assured, Auditor, we didn't forget about that." Part of negotiation is give and take. They were saying, "We wanted to get them to sit down at the negotiation table and get the deal done. We're going to try to get it back," but at the end of the day, to us, it was still an extra \$8 million versus if it had gone to court. That's an estimate; it's our best estimate.

**Mr. Victor Fedeli:** Yep. So the OPA was under pressure to get this done. Under pressure from whom, in your opinion, Auditor?

1540

**Mr. Jim McCarter:** I think basically they were directed by the ministry—I think the Ministry of Energy—to get the construction stopped. I think it was—what was it?—October 11 or 6 was the election date, and you're probably well aware that after the election date, the cranes were still going, there were cement trucks coming in and out, and every day there was more and more media attention. Basically, they were urgently instructed, "We've got to stop construction," and they came up with "We have four ways of doing it." I think I laid that out in my report what the four ways were.

**Mr. Victor Fedeli:** So is it fair to say that a considerable portion of the costs associated with this Mississauga cancellation are due directly to the government's decision to publicly announce the intention to scrap the plant before reaching an agreement with Greenfield? Is that a fair or accurate statement?

**Mr. Jim McCarter:** My sense was that I think the OPA was put in a challenging negotiating position, and I think the people at Greenfield were well aware that, "As

long as we keep the construction going, or threaten to start up construction, it's going to help us from a bargaining perspective."

**Mr. Victor Fedeli:** When did you give your report to the government, Auditor?

**Mr. Jim McCarter:** As in the case with all of our value-for-money audits, once we complete our audit fieldwork, we sit down and we have an oral discussion with the people that we're auditing, and then we give them a draft report. Basically, the purpose of providing them with a draft report—and we tell them it's under freedom of information; it's our working papers—but we do it for factual clearance. Have we got anything here where the facts are wrong? We would have given that report to them—I'm guessing, maybe a rough draft might have been six to eight weeks, maybe six weeks before we issued it. Then the OPA would look at it. Once we reviewed it with the OPA, we also provided a copy to the Ministry of Energy after we had discussed it with the OPA.

**Mr. Victor Fedeli:** About when would that have been? Five weeks ago? Four weeks ago?

**Mr. Jim McCarter:** Maybe three weeks before we issued the report.

**Mr. Victor Fedeli:** Okay. And when, in your opinion—I'm going back to that July date; you said in early July the OPA had already—actually they paid months before, maybe June, August or some of it—

**Mr. Jim McCarter:** Some of it. Some of it could have been paid the day before; some of it could have been paid six months before.

**Mr. Victor Fedeli:** So in your understanding or in your opinion, when did the government become aware of the true cost?

**Mr. Jim McCarter:** All I can do is speak to what the OPA knew.

**Mr. Victor Fedeli:** So the OPA, you knew that they knew in June or August—

**Mr. Jim McCarter:** The OPA was aware—too, when you say "the total cost," what the OPA was aware of was what they had paid out. Now, the OPA was also aware that there was more cost to come and the OPA was aware that there were savings. With respect to the taxpayer versus the ratepayer, I don't know how much the OPA was involved with respect to that decision.

**Mr. Victor Fedeli:** Okay. I asked you a question the other day, but not publicly, so I'll ask you publicly. You used certain criteria such as gas delivery management, transmission and the like in coming up with the Mississauga number. Will you be using those same criteria—or will the auditor be using the same criteria—on Oakville?

**Mr. Jim McCarter:** Yes. We have the same audit team. Mr. Chagani and Ms. Cho, who are here with me today, will also be on it. Basically, the same team will be on the Oakville plant. All of the issues that we've identified, we're pretty familiar with. But again, we will also be looking for, are there any other issues? I would say, on both sides of the ledger, are there any savings that could be different than the ones in Mississauga, and also,



are there any costs associated with the TransCanada relocation that we should be picking up?

**Mr. Victor Fedeli:** So you were talking about the new plant being so much closer that the company is going to save \$65 million. Would the opposite be correct in terms of the Oakville—

*Interjection.*

**Mr. Victor Fedeli:** I'm sorry? It could?

**Mr. Jim McCarter:** If you're talking about Oakville—

**Mr. Victor Fedeli:** No, I was talking about Mississauga.

**Mr. Jim McCarter:** On Mississauga—

**Mr. Victor Fedeli:** You said the plant is so much closer now because it's in Lambton—

**Mr. Jim McCarter:** Yes, the natural gas hub is right near Sarnia—

**Mr. Victor Fedeli:** Is the fact that the Oakville-to-Napanee one is so much farther, the converse is going to be correct?

**Mr. Jim McCarter:** It could be that your gas transportation costs—if you're located down near Sarnia, you just really have to pay Union Gas, and it's not a lot. If you have to bring the gas into Mississauga, you've got to go through Enbridge's pipelines, TransCanada's pipelines and Union Gas's pipelines, so the cost is significantly higher. If you have to go to the east of Toronto, you're going even further.

**Mr. Victor Fedeli:** Would it surprise you to know, Auditor, that the OPA told us the gas delivery and management for the Oakville cancellation to move to the Napanee site will be from a low of \$313 million to a high of \$476 million over the life of the contract?

**Mr. Jim McCarter:** Two things would impact that. The Oakville plant is three times bigger than the Mississauga plant, so you've got three times the volume of gas. The other thing I suspect you would have is an even further distance to go. We would certainly be looking into that, Mr. Fedeli, as part of the Oakville review.

**Mr. Victor Fedeli:** And would it surprise you that they said that the transmission costs will be \$200 million—the transmission solution required for Oakville?

**Mr. Jim McCarter:** I'm just not familiar with that. By "transmission," they might mean: Do they have to build more towers? Do they have to upgrade transformers? Or do they mean line loss? Our staff will be getting into what exactly they mean by that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. McCarter. It's a pleasure having you here, and as Mr. Fedeli said, we really appreciate the work that you've done on this and other files.

**Mr. Jim McCarter:** Thank you.

**Mr. Peter Tabuns:** I'm sorry I won't get to question you extensively in the years to come. Anyway.

First of all, do you believe that Ontarians got value for money in this relocation? Did we get a good deal or a bad deal?

**Mr. Jim McCarter:** I think what I said is, I guess I'm of two minds on that. The policy decision—and the bureaucrats don't make that. The policy decision is made by the government of the day, and it's up to the bureaucracy to implement it in the most cost-effective way that they can. I'm going to answer it with that background, that perspective.

My sense is that I feel that the OPA did strive to get the best deal for taxpayers, but I also felt that because of the urgency to get the construction stopped—a good example would be on the financing agreement. Greenfield came to them, and they basically said, "We want you to pick up—you've got to pay back the money that was advanced. You've got to pay the interest. And by the way, if we have any penalties, you've got to pick that up, too." The OPA said, "I hear what you're saying, but we'd like to see the financing agreement just to see what we're in for." Greenfield basically said, "No, we're not showing you the financing agreement." I suspect that because of the urgency—that would be an example—to get the construction stopped and the deal done, the OPA went ahead and signed it. The cost to EIG: Of \$150 million, \$60 million was repaying the money that it had already been loaned; I think that's reasonable. But \$90 million—most of that was a penalty fee. I think everybody—the OPA and even the external lawyers—was surprised at the amount of that and also surprised that they were paying a 14% interest rate.

**Mr. Peter Tabuns:** Do you believe that the minister or ministry staff did have the full costing of the Mississauga cancellation?

**Mr. Jim McCarter:** I guess it would be: at what time?

**Mr. Peter Tabuns:** In July 2012, would they have understood—

**Mr. Jim McCarter:** I don't know what the OPA communicated to the ministry or to the minister. When they arrived at the \$180-million or \$190-million calculation, I heard Minister Chiarelli—whom I met with—recently say, I think in the Legislature, that to a large extent they were guided by the information that was provided by the OPA. But I don't know exactly what the OPA provided, who they provided it to and when they provided it. I think that would be something you'd have to direct to the OPA.

**Mr. Peter Tabuns:** I'll go back, then. The OPA, in July 2012, last year, knew that it was looking at a lot more than \$180 million or \$190 million. They paid out almost \$245 million, and they knew there were other costs coming. Is that a fair statement?

**Mr. Jim McCarter:** Yes. Yes, it is.

**Mr. Peter Tabuns:** Would you say that by—now it's April—January or February of this year, more of the costs that weren't known last summer would have been known and that the OPA would have had a fuller sense?

**Mr. Jim McCarter:** Yes.

**Mr. Peter Tabuns:** In your investigations, did you ever get a sense that the OPA was reluctant to brief the minister and the ministry on its findings?

**Mr. Jim McCarter:** I would have to say that we found the OPA quite co-operative in providing us with the information that we needed. But with respect to their relationship, if I can put it that way, with the ministry or the minister: It just wasn't part of our review. I can't say what the communications were between the minister and the ministry. I would be speculating on that question, Mr. Tabuns.

**Mr. Peter Tabuns:** Okay. We had the Deputy Minister of Energy here a few days ago. I asked him some questions about Mississauga. He said he'd had a discussion with you.

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**Mr. Jim McCarter:** Yes.

**Mr. Peter Tabuns:** I thought, "Fair enough. I'll wait to get the whole product from you."

In your discussion with him at that time, was he surprised by the numbers that you were working on? Did you go through with him the scale of the expense to the people?

**Mr. Jim McCarter:** At the time we forwarded the report—and I think I met with him probably four or five days later, so I can't say whether he was initially surprised when he turned the page and saw what we had come up with. But when he met with me, my sense was, at that time—I'd say, for the most part, the OPA and probably even the Ministry of Energy, at that time, when they looked at our numbers—I can't say we got significant disagreement, except in perhaps one area, with respect to the savings on the Mississauga plant. That was the only area we might have been out, I think, \$17 million. But with respect to the other costs, I think the feeling was, "Well, Auditor, we might argue a little bit that it might be a little bit this way or a little bit that way," but my sense would be that there wasn't vehement disagreement from the Ministry of Energy and the OPA.

I don't think it would be surprising to committee members that on every value-for-money audit that we do, whether it's a ministry or university coming and saying, "Well, Auditor, we think that maybe you need to put this in perspective or reflect that there was a lot of give and take"—I'll put it this way: We get some arm-twisting. To some extent, if it's a factual error, we look at it and we say, "Prove it," and we try to be reasonable, but at the end of the day, we call it the way we see it.

To answer your question, I think the Ministry of Energy was more along the lines of putting everything in the proper context as opposed to "Auditor, we think your number is way out."

**Mr. Peter Tabuns:** And the Ontario Power Authority had no substantial disagreement with your analysis?

**Mr. Jim McCarter:** With the exception of the savings with respect to when the savings associated with not having to pay for electricity for the Mississauga power plant—basically it was felt we just didn't need the electricity. Other than that one area, I think we had a \$17-

million—other than that, I think for the most part they felt that our numbers were in the ballpark, if I could put it that way.

**Mr. Peter Tabuns:** Okay. One thing that has come up, as we've been raising this question in the Legislature, is a characterization that your findings are sunk costs plus "future costs." My read of your document is that it's pretty standard to say what's the current value of a future cost, net present value. So if someone asks, "What did a particular course of action cost?", one would say, "Yes, this is what I've spent, and these are the expenses I'm going to have to meet in the next while."

I'm assuming that your assessment of cost is standard accounting approach, correct?

**Mr. Jim McCarter:** Yes. My sense would be—I think where some of that future cost will be is if you're paying out a dollar or you're saving a dollar, 10 years down the road—it's called base present-valuing it back, because a dollar down the road is not worth as much as a dollar today, and that's pretty standard, whether you're dealing with actuaries in valuing pension funds or anything. I think it's generally pretty accepted that you need to discount those costs back.

But if you are actually going to be paying cash out of your jeans, if I can put it that way, every year on my electricity bill, we felt that's something that should be taken into consideration. However, in fairness, you do have to discount that back to today's dollars.

**Mr. Peter Tabuns:** Do you believe the government is aware of the difference between total cost to the taxpayer and ratepayer and simple sunk costs?

**Mr. Jim McCarter:** I can't speak for what the minister or the government knows or does not know, but I made a reference to the deputy minister's comments before the committee, where the deputy minister made it very clear that with respect to Oakville, the \$40 million was costs coming out of the Consolidated Revenue Fund, which would be the taxpayer, and we know that there are other associated costs, but basically these will be paid by the ratepayer.

**Mr. Peter Tabuns:** Was there any data you were unable to obtain from the OPA?

**Mr. Jim McCarter:** Not from the OPA, but there was information that we would like to have gotten that we did not get. An example would be, Greenfield basically claimed fairly substantial labour costs. When we looked at some of the labour costs—first, we looked at them for reasonableness. We thought some of the costs looked high. I think I had an example of an administrative assistant getting paid \$110,000 a year over eight or nine years. So again, being skeptical auditors, we were concerned that Greenfield was inflating those costs.

We actually asked the OPA, and through them to Greenfield, "Could we have copies of the T4s, or could just one of our staff go into Greenfield's office for a day and have a look at the payroll records?" They also had an engineer who was engaged to review the costs as well, so we asked the engineer, "Were you able to get access to these costs?" That would be an example of something we



were not able to get access to, but it was basically the right of Greenfield to either allow us or not allow us.

With respect to the OPA, I'd have to say that really, there was nothing that we wanted that we didn't eventually get.

**Mr. Peter Tabuns:** And if you could obtain this data from the OPA, would you see any reason why the ministry couldn't get that same data?

**Mr. Jim McCarter:** I suspect that legally—I don't know what the legalities are. It might be a legal question of whether they would have—

**Mr. Peter Tabuns:** I'm sorry, I was unclear in my question to you. Setting aside Greenfield for the moment, you were able to get data from the OPA which forms the bulk of what you have here. Would you see any obstacle to the ministry getting the same data from the OPA and drawing the same conclusions as you?

**Mr. Jim McCarter:** No. I think if the minister had said to the OPA, "I want something," the OPA would have provided it pretty quickly.

**Mr. Peter Tabuns:** JoAnne Butler, an Ontario Power Authority vice-president, testified, "The OPA eventually determined that the sunk costs for the Mississauga facility were \$190 million. They are higher than the Oakville sunk costs because construction had started. As with the Oakville plant, there are other costs in addition to the sunk costs for relocating the plant."

Would you agree that the OPA is acknowledging that they were aware of the costs beyond the sunk costs in Mississauga?

**Mr. Jim McCarter:** I'm reluctant to speak for the OPA, but I think that the OPA would have been aware that there would be costs in addition to the sunk costs, but they could be future costs as opposed to currently sunk costs.

**Mr. Peter Tabuns:** You've worked with economists and auditors with the Ministry of Energy.

**Mr. Jim McCarter:** Sorry?

**Mr. Peter Tabuns:** You've worked in the past with auditors and economists who worked for the Ministry of Energy?

**Mr. Jim McCarter:** I've worked with economists who have worked for the Ministry of Finance; I'm not sure about economists with the Ministry of Energy.

**Mr. Peter Tabuns:** The people who do the review of costs and projections for costs at the Ministry of Energy: Have you worked with them previously?

**Mr. Jim McCarter:** I'm trying to think of a prior audit. Yes, we did some work going back to 2007. We looked at the Bruce nuclear refurbishment agreement. We had a special assignment and we did look at Bruce nuclear. In that case, even though we worked I think primarily with the investment bankers, we did work with the people in the Ministry of Energy. But I can't tell you whether they were economists. Some of them would have been engineers.

**Mr. Peter Tabuns:** Did they seem like a competent staff to you?

**Mr. Jim McCarter:** I would say for the most part, I think across the OPS we have a fairly competent staff.

**Mr. Peter Tabuns:** So they would have been able to do an assessment of costs and understand the business matters before them with this cancellation and relocation.

**Mr. Jim McCarter:** I would be speculating somewhat to say whether they—I guess your question wasn't whether they did or not, but would they have the competence.

**Mr. Peter Tabuns:** Yes.

**Mr. Jim McCarter:** Let me say they would probably have the competence, within the Ministry of Energy and the Ministry of Finance, to conduct such an analysis, were they directed to do that working with the OPA.

**Mr. Peter Tabuns:** As far as I can tell, the minister hasn't conducted any assessment of costs. Does that strike you as good business practice?

**Mr. Jim McCarter:** I can't really comment on that one with respect to the motivations and what the minister has or has not done.

**Mr. Peter Tabuns:** But the minister would have the ability to ask his staff—and he has quite a few to draw on and he has the resources to hire others—he would have the ability to find out what something cost if he wanted to.

**Mr. Jim McCarter:** Yes, the minister would have the ability to ask his staff those questions.

**Mr. Peter Tabuns:** When the cancellation was promised, there was apparently no calculation done on the range of costs. Is this seen as good business practice?

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**Mr. Jim McCarter:** I can't really comment on whether there was or whether there was not that calculation done. I'm not aware of what information was provided by whom with respect to what rationale regarding the initial \$180 million.

**Mr. Peter Tabuns:** One of the savings that you identified that accrued to the owners of the now-Sarnia or Lambton plant was a savings on gas delivery. Did you find any evidence that the government tried to capture that savings in its negotiations?

**Mr. Jim McCarter:** We asked them that because when they renegotiated the rate from \$12,900 down to \$12,400, the basis for that—it didn't recover any, but there was about \$80 million to \$100 million of reusable equipment. What we found is the reduction from \$12,900 down to \$12,400 only recouped about \$20 million of that. So we know they didn't recoup most of that. I think their answer was "We think the other plant is going to cost more." But on the gas management, we didn't see any evidence that they were successful in recouping or getting anything built in for that. I think the response that we had is, "Well, Auditor, we tried, but every negotiation is give and take."

What surprised them was that I think they were estimating that the gas management savings to Greenfield would be about \$30 million. When we went back to the actual agreement, it was actually—we think it's closer to \$65 million. Mr. Sharp was actually in contact with us a

while ago, and I think he's going to be providing information to the committee. His number is not quite as high as ours, but I think it will be close.

Where the difference related to is on the gas management costs. You can negotiate two different ways of doing it: a rate plan 300 or a rate plan 125. Most people use the rate plan 125, which means you're going to pay for your hookup costs. It gives you a much lower transportation cost. Greenfield, on the other hand, said, "We don't"—I shouldn't say; I'm not sure if they had the capital for it. But they negotiated what's called a rate 300 plan. It's quite a costly way of negotiating, and I think the OPA just assumed they would have used the rate plan 125, and that's how they came up with the \$30-million estimate as opposed to \$65 million.

But they were unsuccessful, really, in getting that reflected when they renegotiated the rate. The comment that we had from the OPA is basically, "Everything, Auditor, is a give and take, and maybe we gave a bit here because we took on the other side of the coin." That was their response to us when we asked that question.

**Mr. Peter Tabuns:** So the best thing that ever happened to Eastern Power was to have this plant cancelled. I mean, this was like Christmas for them.

**Mr. Jim McCarter:** I guess that might have been the US hedge funds that got the \$150 million. My sense in Greenfield, though, is they were very hard bargainers, and they definitely took advantage of their strong negotiating position.

But my sense is they want to build a gas plant. In fairness, I think they wanted to build the Mississauga gas plant, but when it didn't come to fruition, they were going to bloody well make sure that they got paid as much as they could. My sense is I think they still want to go ahead and build that Lambton gas plant and get it into operation.

**Mr. Peter Tabuns:** One of the things that came up in reviewing these documents is the risk that government assumes when it signs these private power deals. One is the potential of being held responsible for future profits. Do you see this is a substantial risk for these private power plants?

**Mr. Jim McCarter:** When you say that the government will be responsible for—oh, basically what you're saying is to make the builder whole—we've heard the language.

**Mr. Peter Tabuns:** Yes.

**Mr. Jim McCarter:** Make the builder whole again.

**Mr. Peter Tabuns:** Correct.

**Mr. Jim McCarter:** I think what the issue is, if you were going to make this much profit in this plant, we don't want to give you any more, but in fairness, we don't want to give you any less. I'm not sure that that's an unfair philosophy when the builder has gone ahead, they have a viable contract, they're trying to get the plant built, and the government comes along and basically says, "We're going to cancel it." I suspect a court of law might find the same thing, too, saying, "You've been injured, and we will try to make you whole again."

Basically, you want to make your best efforts to not make them too whole, if I can put it that way.

**Mr. Peter Tabuns:** So inherent in these private power deals is the fact that we're on the hook for future profits if there's any change.

**Mr. Jim McCarter:** I guess it would depend on what the change is. If you basically cancel a plant and the company has—whatever—gone ahead and raised financing—or often what a company will say is, "I've got two investment proposals, and I'm going to go with this one." There is lost opportunity cost by a company saying, "Instead of doing this, now I don't have the capital to do this on the other side, and I've got to look after the interests of my shareholders." So I have some empathy for that sort of philosophy.

**Mr. Peter Tabuns:** I understand that, but it's a risk that we take on when we engage with them—

**Mr. Jim McCarter:** Yes.

**Mr. Peter Tabuns:** —that we may be stuck with 20 years of profits that we have to pay for.

**Mr. Jim McCarter:** As opposed to us filling—yes.

**Mr. Peter Tabuns:** Okay. The financing for this: That was an extraordinary deal that the American hedge fund was able to drive. How does this compare to public financing for other infrastructure?

**Mr. Jim McCarter:** I think we were—when we actually—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

**Mr. Peter Tabuns:** I'll be back.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Why don't you go ahead and finish Mr. Tabuns' question, Jim.

**Mr. Jim McCarter:** Sure. I think that the gist of Mr. Tabuns' question was, was this a pretty lucrative financing arrangement?

**Mr. Peter Tabuns:** Well, public financing would be a lot less expensive, I would think.

**Mr. Jim McCarter:** Yes, and I think it has been reflected in testimony even from the committee members. There was an acknowledgement—and that would be our view—that Greenfield had, if I could put it this way, challenges in obtaining financing for the project, because we asked, "Why wouldn't you go to any financial institution? A pension fund that loves to fund infrastructure—why couldn't you go there?" But for whatever reason, they did not or were unable to obtain financing in Canada.

The other thing is, they got approval to build the plant a year—it took them a year after they got the building permits to build the plant to actually get the financing. And again, when we saw that they were paying a 14% interest rate and pretty onerous penalties—you can see pretty onerous penalty terms. They paid certainly a very high price to obtain that financing.

**Mr. Peter Tabuns:** Thank you.

**Mr. Bob Delaney:** Thank you. Well, Mr. McCarter, I think in the 10 years I've known you, this is my first opportunity to ever ask you questions in a committee. I



guess just to ask you kind of a tongue-in-cheek one, if the auditor has sworn to tell the truth based on your estimates and your opinion in accordance with generally accepted accounting principles, I find it amusing that the committee then has to assume that your opinion is in fact completely the truth.

**Mr. Jim McCarter:** I think that's the case.

**Mr. Bob Delaney:** I think so, too. I was having a hard time figuring it out.

Thank you again for being here on short notice. You've been talking about the estimate, the \$275 million, and you've said it could be as low as \$260 million, as high as \$290 million. So what you're saying is that your upper and lower bounds are about 5.5%?

**Mr. Jim McCarter:** If you're familiar with a normal distribution probability, is it possible that it could be \$250 million? Is it possible that it could be \$300 million? It's unlikely, but it's possible. As you get closer to \$275 million, I'd say your probability gets higher.

**Mr. Bob Delaney:** And if you and I get technical, we can put the whole room to sleep.

I'd just like to expand on a line that you used in your news conference on Monday. With respect to your estimate, you said, "Much of this has already been paid out, and the remainder will come out of hydro bills"—and here are the operative parts—"for the next two decades or so." What caught my attention there was the "two decades." Based on that, I'm assuming it's fair to say that your office took a pretty long-term and forward-looking view of the costing?

**Mr. Jim McCarter:** Yes, I think we looked at something like—let me give you an example—line losses. When you have to transmit the power to the more populated areas of Ontario—the reason that it was built in the southwest GTA was that was where we have the biggest need for power is in basically that area of the GTA. When you transmit power from the Mississauga plant where it was, you have virtually no line loss, is our understanding. If you're going to transmit it from Sarnia, you're going to have, basically, line loss. You lose some of that power, so you have to make up some of that, and if you have a 20-year contract, what we are saying is that over those 20 years, you're going to have some line loss over the 20 years. The technical term, as we've talked about, is you present-value of that back in today's dollars.

So we did look out 20 years, and there is a bit of—I have to be honest: There's a bit of crystal ball gazing. And I mentioned that's why it's an estimate, because we are looking quite a ways down the road.

**Mr. Bob Delaney:** Well, with that, I'd just like to take the risk of going into some of the process rather than the outcome. Looking at the process, electricity is terrifically complex. So in order to perform this analysis, obviously it was a fairly complex process for your office to arrive at any form of number, let alone the one you did.

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**Mr. Jim McCarter:** Yes. Essentially, what we did is we went to the OPA, we talked to the IESO and OPG,

and there had already been estimates done. So what we did was basically look at their estimates, we talked to the people who did the estimates, we would talk to someone at the OPG about what would be the ranges of this. It wasn't that we sat down and calculated the estimates; we looked at what had already been prepared and basically talked to other people at outside organizations to get some feedback on whether the estimates were essentially reasonable.

But again, say with respect to the line loss—the \$40 million—it depends, for instance, on how much power is going through the line. If that line is at 95% capacity, you lose a lot more; if you've only got 25% capacity on that line, you lose a lot less. That will impact what that number is.

**Mr. Bob Delaney:** Were there any variables you chose to take into account that either the ministry or the OPA had not at that time?

**Mr. Jim McCarter:** I would have to say that I think they were not surprised when we came forward—maybe with the exception of a couple, like the gas management cost, the rate 300. I think they felt that everybody would be using the rate 125 to calculate that; the actual contract was at the rate 300. So I would say they were aware of the issue, but when we delved down into some of the details, I think there were a few areas where we had a different approach with respect to how we calculated something. But at the end of the day, with the exception of the savings on the Mississauga plant, where they clearly said, "Auditor, we disagree with your number. We think there should be another"—whatever—" \$17 million in savings." So I'd say that for the most part, when we were coming forward to the OPA with the Keele Valley and these different things, they were aware of it. They were aware of the issue.

**Mr. Bob Delaney:** Then with the efforts of the best people you had available to put on the audit and the combined skills they brought to the effort, it's fair to say that what you've tabled with the Legislature is an estimate and, as is the case with anything whose lifetime extends out a full generation, other things will happen in that 20 years that could make it either higher or lower.

**Mr. Jim McCarter:** Yes. One thing I can say with quite a bit of certainty is that it won't be exactly \$275 million.

**Mr. Bob Delaney:** Okay. Was there an extra layer of difficulty, given that the estimate you made was looking forward rather than backward, as you normally do when you're looking at something that has already happened as opposed to something that you're projecting will happen over the span of 20 years?

**Mr. Jim McCarter:** There's no question. There's more judgment when you're looking at part of it that's future-based. A good example would be the pre-election report we do before every election. That is basically a three-year projection on what the surplus or deficit will be, and there's certainly more judgment required in doing something like that, as opposed to auditing a financial statement that summarizes events that have already happened.



**Mr. Bob Delaney:** Is it possible, then, that the OPA might have had a different interpretation of some of the same variables, even though you may agree on some of the parameters going into the algorithms you may have used to crunch the numbers through the spreadsheets and project forward? Would it be possible that the OPA would look at the same numbers and say, “Well, we’ll calculate to a different result,” whatever that may have been?

**Mr. Jim McCarter:** With the \$350 million in costs before we get to the offsetting savings, my sense would be that those numbers are fairly hard numbers, and I think the OPA—you’d have to ask them; I don’t want to put words in their mouth—would say, “With the \$350 million in costs, we would agree that the auditor is pretty close to what it should be.”

With respect to the \$76 million in savings, that’s where we had a disagreement. Maybe the one area in the \$350 million would be that line loss. But the Manby transformer, the Milton upgrading, the fact that they were paying for the gas and hydro hookups and weren’t paying it before: Those numbers are fairly hard numbers, Mr. Delaney.

**Mr. Bob Delaney:** How long did it take you to write the report from beginning to end, from the time people started to roll up their sleeves and started looking at pieces of paper until it was fundamentally complete and in the can?

**Mr. Jim McCarter:** I’m guessing it would be maybe four weeks, maybe six weeks, because we have an internal review process in the office that it would go through, and if you’re then including the time—then we’d give it to the OPA to have factual clearance with them, and once we discuss it with them, we give it to the Ministry of Energy. So on top of all that, we could be looking at eight weeks, 10 weeks.

**Mr. Bob Delaney:** Okay, all right. During that time you worked very closely with the OPA and the Ministry of Energy?

**Mr. Jim McCarter:** Not so much with the Ministry of Energy; only, maybe, in the last couple of weeks would we have had significant discussions with the Ministry of Energy. I would have said 90% of our work would have been at the OPA, and we communicated somewhat with the people at the OPA, OPG and also the Ministry of Energy. But the Minister of Energy was really at the tail end.

**Mr. Bob Delaney:** The OPA, OPG—obviously not a lot with the OPG.

**Mr. Jim McCarter:** Not a lot with the OPG.

**Mr. Bob Delaney:** Okay.

**Mr. Jim McCarter:** But there were a couple of issues that we did discuss with them.

**Mr. Bob Delaney:** Were there any significant dealings with any of the other players that you mentioned in your report?

**Mr. Jim McCarter:** I think basically we felt that the OPA had the information that we needed to come up with the cost. And as I said, they were pretty—they basically

were co-operative during the audit and I’d have to say, too, when we asked for something, I don’t feel that we got stalled. I felt that they were pretty forthcoming in giving us the information.

*Interjection.*

**Mr. Jim McCarter:** My colleague had just mentioned, we also did talk to the IESO and with Hydro One, and that involved systems upgrades, and we did have the question that—you know, the big question was, would there be additional transmission lines needed to get the power from Sarnia to Toronto? But based on the information we had, I think we had reasonable assurance that we wouldn’t need to be building more transmission lines, that the transmission lines were adequate. So we really had nothing in there for the cost of that because we felt they were adequate.

**Mr. Bob Delaney:** In reading the report, there’s nothing in there that indicates any evidence of wrongdoing. Did you find any evidence of wrongdoing on the part of the OPA, the ministry or anybody else?

**Mr. Jim McCarter:** No, I don’t think there was any evidence of what I would call wrongdoing. No.

**Mr. Bob Delaney:** Just to talk to you a little bit about the negotiation process: At your news conference and earlier here today, you talked about the difficult and possibly untenable position that the OPA and the government were in after the decision to cancel was made but construction had continued. This put, as you said, the builder in a very strong bargaining position. If the builder had become privy to confidential and privileged information held during those negotiations by the government and the OPA, information, for example, like the government’s negotiation mandate, in your opinion, would the OPA’s position have been even further weakened?

**Mr. Jim McCarter:** Yes, and I think I actually—that issue came up at public accounts when we were actually debating the motion—there was a motion on the floor that we would do Oakville and Mississauga, and I was asked a question similar to that because the Oakville negotiations were under way. I think I did say that I would be reluctant to do anything that would put that sort of information into the hands of the other party, anything that would be prejudicial to the taxpayers’ interests.

**Mr. Bob Delaney:** The former secretary of cabinet was here earlier to testify. When asked what would happen if the company had had access to confidential information from the government and the OPA, she said, “It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about” while “they’re talking about ... the conclusion of the deal. It’s just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. I would have been concerned about that in any negotiation.”

Would you agree with that, and was there anything in what you did that you could comment on in that vein?

**Mr. Jim McCarter:** Yes. I mean, to put it in layman’s language, it’s like playing poker: You don’t show the people around the table your cards.



**Mr. Bob Delaney:** Yes, I think that's a good way of putting it.

On Monday, you also spoke about the risks associated with the government simply refusing to compensate the builder. Taking such an approach would certainly have opened the government up to litigation and possibly significant costs. Your comments?

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**Mr. Jim McCarter:** There were four options—and I reflected that in the report—that the government was considering to stop construction.

One of them would have been to immediately pass legislation and set an arbitrary compensation amount. The challenge with that is, I suspect, you would open yourself up to lawsuits, and probably one of the longer-term detriments of that strategy is that your other suppliers may have said, “In future deals, if we run the risk of that”—as soon as you increase risk in a contract, the people that you deal with want a higher return. So you could have run the risk that people said, “If you're willing to ‘play ball’ like that, then we want a higher rate of return on the rate we're going to charge you for electricity, because we have more risk in the contract than we thought we otherwise would have.”

Again, that was reflected in the discussions and some of the documentation we looked at between the lawyers and the OPA, that that would have been one of the risks of taking that strategy. But that strategy was seriously considered as to, “how do we get this plant to stop construction now?”

**Mr. Bob Delaney:** Okay, thank you. Former Secretary Jamieson testified about the importance of speed when negotiating a relocation deal with the company. She told the committee: “As long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed to me was important.”

So my question here is, as timing was an important factor, how might cancellation costs have increased if construction had continued as the parties wrangled about the issue?

**Mr. Jim McCarter:** Well, basically, you'd be putting money into the ground for no reason. Then you'd have to reimburse the suppliers for money being put into the ground. That was certainly one of the issues.

The other issue, in providing the context in the report—in fairness, with the construction going on every day, given the announcement by the government that construction would stop, there was some pressure—I think realistically—on the government to get the construction stopped, and that's why they indicated to the OPA that this was urgent.

**Mr. Bob Delaney:** So the longer the delay, the higher the sunk costs?

**Mr. Jim McCarter:** Yes.

**Mr. Bob Delaney:** Okay. This then put the OPA in a difficult position, because there was no option but to negotiate and get the best deal available as expediently as

possible. So, although you've, I think, been critical of some of the aspects of the deal, my question was, do you think that the OPA acted in good faith to get the best deal possible, given that time was one of the largest variables?

**Mr. Jim McCarter:** As I said, in the context, our sense was that the OPA was very cognizant of getting the best deal that they could for the taxpayers, but they were put in a very—they did not have the upper hand during the negotiations. My sense was that Greenfield took full advantage of that in arriving at the ultimate negotiated settlement.

**Mr. Bob Delaney:** Okay. Was there anything else you wanted to add on that?

**Mr. Jim McCarter:** Maybe the only other thing I would throw in—my colleague has reminded me. At the tail end, the Ministry of Energy essentially—I don't want to say “took over” the negotiations—appointed an independent negotiator, and basically OPA sort of stepped aside for the last six weeks and the independent negotiator more or less negotiated the deal.

**Mr. Bob Delaney:** Okay, thank you. In your report you mentioned a government news release that announced an election promise to cancel the power plant. Were you aware of the other parties' commitments to cancel the same plant, during the election?

**Mr. Jim McCarter:** That was not part of our review.

**Mr. Bob Delaney:** Okay. Well, let me try that a different way, then. In the event that either the PCs or the NDP had formed the government and they had followed through on the same clear commitments to cancel that power plant, in your opinion, would the cost of cancelling or relocating the plant, or the parameters under which the negotiation took place, have been fundamentally different?

**Mr. Jim McCarter:** They might have been.

**Mr. Bob Delaney:** Okay.

**Mr. John Yakabuski:** Chair? Point of order, Chair.

**Mr. Bob Delaney:** When you answer that, can you expand on that a bit?

**Mr. Jim McCarter:** Yes—

**Mr. John Yakabuski:** You're asking the witness to answer hypothetical questions—

**The Chair (Mr. Shafiq Qaadri):** This witness is particularly capable of—

**Mr. Bob Delaney:** I will await the Chair's ruling.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Well, the auditor is about nothing but opinion, John.

Sorry, you had started to say—

**Mr. Jim McCarter:** Basically, I had read in the media, but I didn't verify it with respect to the comments made by the other parties. Your question to me was: If the other parties were put in that situation, would the outcome have been the same? As Mr. Yakabuski mentioned, that might be conjecture on the part of the other parties, but I suspect they would have come up with the same four options that the OPA came up with, saying, “If the plant is going to be cancelled, here are four different ways we can do it.” But as to what each party would have



done, it would be conjecture on my part to try to decide, you know, which party would have taken what route.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Mr. Yakabuski has one question before I jump in.

**The Chair (Mr. Shafiq Qaadri):** As long as it's—

**Mr. Victor Fedeli:** Oh, no. It's a great one, I'm sure.

**Mr. John Yakabuski:** Chair, I think it's well in order.

Thank you again for joining us, Mr. McCarter, for what may be your last time in front of a committee, unless you're in public accounts in the next couple of weeks.

I have a question for you. If both other parties, other than the government, had never contracted to build the power plant, how much would that have cost?

**Mr. Victor Fedeli:** Thank you very much. I'll take over from here.

**The Chair (Mr. Shafiq Qaadri):** Thank you for your rescue, Mr. Fedeli. The floor is yours.

**Mr. Victor Fedeli:** I'll spare you having to answer that question in the same tone that you had to answer the last one.

I want to talk quickly about confidentiality. If I recall, at the last Ornge scandal hearings I was at, to get around confidentiality, did we not agree at the meeting I was at that the confidential documents—only those documents—would be pulled from the public meetings and available for review in the Clerk's office? Is that not a way that we got around the members of the committee viewing confidential documents without ever having them disclosed to the competitors?

**Mr. Jim McCarter:** There are two types of confidential documents. The first would be client-solicitor privilege protected documents, and my understanding is that the committee has the right to require the production of those documents. However, the advice to the committee was, "Don't take that lightly," because it's probably one of the most important legal principles.

So the committee really has three options for client-solicitor: They can still require production of documents; or they can go in camera, basically clear the room and ask the witness to divulge what's in the client-solicitor document; or they can do the other option, where they can view them in the Clerk's office with the Clerk there.

**Mr. Victor Fedeli:** So, asking for those documents while the negotiations were on and having them delivered in camera or in the Clerk's office would not, in your opinion, have jeopardized the ongoing negotiations then? There is a way to do that?

**Mr. Jim McCarter:** The more people who see those documents increases the risk that some of that can get out into the public forum, but taking those measures would reduce the likelihood of that happening.

**Mr. Victor Fedeli:** And did we indeed not do that in the public accounts committee for Ornge?

**Mr. Jim McCarter:** In the public accounts committee, yes, there were a number—I think maybe a skid—of documents that that might have been done for.

**Mr. Victor Fedeli:** I remember it. "Skid" is a good word.

Number two: Mr. Delaney was questioning your judgment about 20 years—using a 20-year number—and you said that more judgment is indeed future-based. Is that not also true for the savings, then? Are the savings as hypothetical as—

**Mr. Jim McCarter:** Yes, on both sides of the coin. Whether it's future savings or future costs, there is an increased degree of uncertainty.

**Mr. Victor Fedeli:** I'm sorry he wasn't here to hear that.

So it's not just on the expenses that you have made some estimates; the \$76 million of it happen to be savings?

**Mr. Jim McCarter:** It's also the savings, such as how much are we going to save on the Mississauga power plant not being built?

**Mr. Victor Fedeli:** Okay. I appreciate that—clearing that up.

My third point: You were philosophizing about why they couldn't get financing, and you said, "They were not able to obtain financing in Canada." Would it surprise you to know that back in 2004 when Greenfield bid on the gas plant project they submitted letters of financing commitment from Canadian lenders? Do you know about that?

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**Mr. Jim McCarter:** Yes.

**Mr. Victor Fedeli:** I've never seen you look like that before. Did I step on something here?

**Mr. Jim McCarter:** It's unusual for the auditor to smile.

**Mr. Victor Fedeli:** Now am I stepping on something here?

**Mr. Jim McCarter:** We were aware of that and, again, they did get letters of commitment initially. When you submit an RFP, in your winning bid you have to submit, basically, letters of credit showing that you have the security, and they did get letters of credit from one of the banks.

**Mr. Victor Fedeli:** A Canadian bank.

**Mr. Jim McCarter:** A Canadian bank. Again, we were a little surprised that they weren't ultimately able to get the financing from that bank and ended up having to go down and borrow from a US hedge fund at 14%.

**Mr. Victor Fedeli:** Hang on a second. They bid for the contract. They submit a letter of financing commitment from a Canadian lender, and that's in the documents they submit. They win the bid—partially, obviously—based on that as one of the criteria. That doesn't materialize. They're forced to go to the States and get a 14% loan from a hedge fund, and we're stuck paying for that loan. But that's not what they agreed to in their original filing when they submitted letters of financing commitment.

**Mr. Jim McCarter:** I think that the way it would work is that once they won the bid—and part of that would be you've got to submit a number of things with



your bid, one of them being a letter of financing—I think the OPA's position would be: "We don't really care where you get your money. We just want the plant built for the cost that you agreed to build it for and it has to be completed by this date. Really, it's up to you where you get your financing." I think the way they do it, it's also up to you where you site the plant. It's up to you to get the environmental—

**Mr. Victor Fedeli:** There's no breach of a contract when the letter they submitted of their financing commitment was one and where they actually got the money was different?

**Mr. Jim McCarter:** I don't think that's a breach of contract, because if I was in their shoes, what I would do is actually go out to another lender and try to get a better deal.

**Mr. Victor Fedeli:** But we're stuck paying for more because of that deal.

**Mr. Jim McCarter:** Well, basically, because they're paying a 14% interest rate and we agreed to pay the penalties, yes, we ended up having to pay that penalty.

**Mr. Victor Fedeli:** Do you know what CCAA protection is?

**Mr. Jim McCarter:** No.

**Mr. Victor Fedeli:** We have a letter from the Ministry of Energy to the Ministry of Finance. The Ontario Power Authority is currently developing a proposal around forcing Greenfield into CCAA protection. Were you aware that they were doing that?

**Mr. Jim McCarter:** I'd have to say no.

**Mr. Victor Fedeli:** You weren't aware of that?

**Mr. Jim McCarter:** Unless that's the—

**Mr. Victor Fedeli:** This would have been December 23, 2011—a little Christmas gift here.

**Mr. Jim McCarter:** Does that have to do with bankruptcy?

**Mr. Victor Fedeli:** I'm not an auditor.

**Mr. Jim McCarter:** I'd have to say I can't recall that.

**Mr. Victor Fedeli:** Okay. Thank you.

In the documents, when the government announced the \$190-million figure—let me give you a breakdown of what their press release said, and then we'll try to jibe that to what you've got on page 15. They said \$85 million is for the building, \$88 million is to EIG in an early termination settlement and \$7 million are site-specific costs. That totals the \$180 million, and then the \$10 million was that side deal. How do those numbers jibe with what you learned to be accurate: \$85 million, building; \$88 million, early termination; and \$7 million, site-specific?

**Mr. Jim McCarter:** I think some of those costs sound accurate, but there are additional costs on top of that.

**Mr. Victor Fedeli:** So the \$85 million, building, we figure, is a good number?

**Mr. Jim McCarter:** I think what they're saying is that they paid EIG \$150 million and we had to pay them back \$59 million or \$60 million to repay the loan. The penalty—we're paying them \$150 million. We get nothing for the money that we paid back, so I think

they're picking up the \$88 million there possibly. Basically, they paid EIG \$150 million—\$60 million was to repay the money already advanced; \$90 million was a penalty. That's close to the \$88 million.

**Mr. Victor Fedeli:** In the penalty?

**Mr. Jim McCarter:** Yes. I think the \$88 million is probably close to the \$90 million that we had for the—

**Mr. Victor Fedeli:** I agree with you, incidentally. The \$60 million to repay the fund, that then came from the OPA.

**Mr. Jim McCarter:** Yes.

**Mr. Victor Fedeli:** So that's why the \$150 million to repay the US-based lender—\$90 million comes from the taxpayer and \$60 million comes from the ratepayer. Is that the differentiation?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Jim McCarter:** I have to be honest; I don't know. I really have no information on the split, on how they arrived at the \$190 million. But my sense was later in the Legislature, they made it very clear that the \$190 million is the cost to the taxpayer.

**Mr. Victor Fedeli:** When they continually claim that the Oakville cancellation will only cost, total, \$40 million, do you think that's an accurate assessment, Auditor?

**Mr. Jim McCarter:** Again, we haven't done our report on the Oakville plant, but having said that—I don't want to speculate, but I'll try to be helpful to the committee where I can, and I think the Deputy Minister of Energy was asked a similar question. His response was that the \$40 million will be paid by the Consolidated Revenue Fund, which is the taxpayers. We knew that there would be other costs and benefits of relocating to the new site. Those would be the obligation of the ratepayer.

**Mr. Victor Fedeli:** So again, it's that subtle nuance between total cost is not true; it's ratepayer cost—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns?

**Mr. Victor Fedeli:** Thank you again, Auditor, for being here.

**Mr. Peter Tabuns:** Thank you, Chair, Mr. McCarter.

September 29, 2011: Immediately after the announcement of the promise to cancel the plant, Andrea Horwath wrote you a letter asking you to do an audit of the contracts and the risks that we faced, "we" being the people of Ontario. I'm assuming that you had to decline, as you've declined requests that I have made on this.

**Mr. Jim McCarter:** Yes. Actually, I think I had another request from you just recently, Mr. Tabuns.

**Mr. Peter Tabuns:** I know, and I cried when I got your response, Mr. McCarter.

*Laughter.*

**Mr. Jim McCarter:** Yes. I think I would have had a similar response to the leader of your party that while it doesn't fall under section 17 of the Audit Act, if the public accounts committee were to pass a motion, we would do the work.

**Mr. Peter Tabuns:** When was the next time a party leader contacted you to ask for an audit of this situation?



**Mr. Jim McCarter:** The next time—I can't recall.

**Mr. Peter Tabuns:** And I don't have information to prompt your memory with, so I will leave it at that.

Yesterday, Shelly Jamieson, the former secretary of cabinet, indicated that she was asked about options for cancelling the Mississauga plant in the spring of 2011. Do you think significant money would have been saved had the plant been cancelled in the spring or summer of 2011?

**Mr. Jim McCarter:** If the plant was going to be cancelled, the earlier you go through with the cancellation—it would have been higher savings, although I'm not sure about the EIG payment. If you had the luxury of time, perhaps you take a bit of a more hardball approach and say, "Let's go to court."

**Mr. Peter Tabuns:** The OPA renegotiated the Greenfield contract in 2009. You note that they raised the NRR or the monthly payment per megawatt of capacity.

**Mr. Jim McCarter:** Yes.

**Mr. Peter Tabuns:** Do you know why they raised the payment?

**Mr. Jim McCarter:** We asked the question because it was a fairly substantial raise. I think it was a 50%, 55% increase. The explanation that we got was that a number of the events that prohibited the plant from being built were beyond their control in the sense that even though they were responsible for getting environmental approval, Mississauga was very much—I mean, you had the mayor, Hazel McCallion, here before you. Mississauga was very much against the plant. They made it as difficult as possible to get the plant started. I think the province had to go to the OMB to finally get the necessary approvals, and I think Greenfield went back and basically said, "Well, this is not our fault. We can't build the plant three and a half years later for the same cost." I think the OPA indicated to us at that time—not now, but at that time—that they still felt that the plant was needed. It was a good location, it was where they needed the power, and they felt that what they paid them was a reasonable rate, given the economic environment, notwithstanding it was a 54% increase from the prior rate.

I think it was an issue that, perhaps, under the contract, legally they didn't have to renegotiate. I suspect they felt that if we didn't renegotiate, they were going to walk away from the deal under force majeure provisions, and therefore we still want the plant. We think it's a reasonable price—the jury's probably out on what's reasonable—but that's what we were advised by the OPA, and they indicated to us, "This is why we went ahead and did it."

**Mr. Peter Tabuns:** If I want answers to those questions, I'm going to have to go to them. But as I understand it, at that point, they didn't have financing for building either.

**Mr. Jim McCarter:** That would be my view, but we didn't go into that detail back in 2009, what they had and what they didn't have. But I know that when they eventually got approval and the building permit in 2010, it took them a year—our understanding was—to get the financing and get the shovel in the ground.

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**Mr. Peter Tabuns:** Can you discuss a bit about the force majeure provisions in their contract?

**Mr. Jim McCarter:** My colleague is providing me a bit more detail on the force majeure. The force majeure is basically things beyond your control, and it basically meant that they could extend the date of the contract. But I think there was a term in the contract that after 36 months, it may well have been that either party could have walked away at that time because, after 36 months—often that's in there because after 36 months, each party has the chance to sit back and say, "Do we still want to go ahead with this?" It's unusual for force—that's a long time for force majeure events: three years.

**Mr. Peter Tabuns:** I guess the thing that I keep coming back to is that you didn't have to perform any real acts of magic to get this report together. Bruce Sharp, who is an energy consultant, came up with numbers that seemed to buttress everything you've said. Certainly, he identified the savings on gas transmission, and he gave a lower figure than you, but—

**Mr. Jim McCarter:** Yes.

**Mr. Peter Tabuns:** There's no reason that the government of Ontario—the present government—could not know the cost of the Oakville and Mississauga cancellations and relocations. There's no reason it should be a mystery to them.

**Mr. Jim McCarter:** I don't really know what the government, in the sense of the Ministry of Energy or the Ministry of Finance, knew and didn't know. But if you were to put that in the perspective of the OPA, the OPA certainly had the data to come up with a lot of the numbers that we came up with.

**Mr. Peter Tabuns:** I think, in fact, that's correct, but I would suggest that you did a thorough job, and we're pleased that you did, but you didn't find hidden documents and sunken treasure. You looked at the business situation, you looked at the cost of gas transmission, you looked at electricity provision, and you were able to find out these numbers on a fairly straightforward basis.

**Mr. Jim McCarter:** Yes, straightforward in the sense that it did take some time—

**Mr. Peter Tabuns:** I'm sure.

**Mr. Jim McCarter:** —to delve into some of this and to go back and find out—for instance, a lot of times you spend time. Like with respect to "Do we need more transmission lines?" we spent a fair bit of time actually looking at that. At the end of the day, it turned out that maybe we wasted our time because there's no cost there; there was no saving. But I'd have to say that the issues that we identified—we were pretty much aware, once we went in, of what the issues would be: "Here are all the different things that you have to look at." The OPA was aware of much of that. But again, part of it is the time. They were certainly much more aware, when we were doing our work in, say, January, February, on some of the stuff than they would have been nine months earlier.

Some of the things, like the hard costs, like I said, they had already paid the bills or knew they had to pay the



bills, so they had a pretty good understanding of what those hard costs were in early July.

**Mr. Peter Tabuns:** From what you've put forward, there weren't a lot of mysteries, in fact, and if I were the Minister of Energy last July, I could have put a phone call in to Colin Andersen, and I could have gotten most of the numbers that you have. And if I was the Minister of Energy this February, I could have made a similar call to Colin Andersen and gotten updated numbers and a pretty good picture of what was going on here.

**Mr. Jim McCarter:** Yes, as time goes on, your number gets harder.

**Mr. Peter Tabuns:** That's clear. You know, you've been very thorough, and I'm very appreciative for what you've done. Thank you.

**Mr. Jim McCarter:** Thank you, Mr. Tabuns.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Mr. McCarter, this is going to be kind of interesting because you won't be the auditor at the time the Oakville numbers come out and your successor isn't here to pose questions to. Please forgive me if I walk close to the grey line in asking you to speculate, which is not my intent, but what I want to talk about is some of the thinking and the methodology going into the examination of the process as regards Oakville. What led you to begin your investigation into the Oakville plant?

**Mr. Jim McCarter:** Within a week after Premier Wynne was elected as the leader of the Liberal Party, I got a formal letter from the Premier asking me to conduct a review of the Oakville plant because the negotiations had concluded, and to issue a public report to the Legislature on what our estimates of the costs associated with the cancellation and relocation of the Oakville plant were.

Within a day or two later, because that does fall under section 17 of the Audit Act, I responded that we would conduct that review. However, I did say that we would not delay the Mississauga review and issue one combined report. I did say that I wanted to finish the Mississauga report, report that publicly and then start up the Oakville plant.

**Mr. Bob Delaney:** Okay.

**Mr. Victor Fedeli:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Fedeli.

**Mr. Victor Fedeli:** I wanted to remind the committee that in public accounts we asked for this Oakville to be done—

**The Chair (Mr. Shafiq Qaadri):** Though we always appreciate your reminders, Mr. Fedeli, that is not a point of order.

**Mr. Victor Fedeli:** How can I reword it? I'm so new here, Chair. I don't understand—

**The Chair (Mr. Shafiq Qaadri):** I'd invite you to review with your team tomorrow.

**Mr. Bob Delaney:** Mr. McCarter, do you anticipate the process for the Oakville report to take a similar length of time to that of Mississauga?

**Mr. Jim McCarter:** What I've indicated was that, on one hand, the numbers are a lot bigger, but on the other hand, the audit team does have more familiarity with the issues, so that should expedite things. I have stated publicly that my best estimate would be that the office would be able to complete that work probably in mid-to-late August or early September, and it would be the decision of the incoming Auditor General whether to report that at that time or perhaps hold off until mid-September when the Legislature is back, because if possible we do try to report directly to the Legislature.

**Mr. Bob Delaney:** Is it reasonable to expect that the process would be similar and the type of complexities that you would encounter, allowing for the learning curve in Mississauga, would also be comparable?

**Mr. Jim McCarter:** Yes. Although, again, it's a different plant, a different contract. There could be other things that aren't in the Mississauga report that we might look into and we're just not far enough along in the review that I can say what impact that might or might not have. Generally, the process will be similar.

**Mr. Bob Delaney:** I quite understand that. Looking at both reviews, did you have access to information that would not have been available at the time that either the ministry or the OPA made their initial assessments to go forward with the plant or to make some of the decisions that they did?

**Mr. Jim McCarter:** I think because we did the review in early 2013, maybe the best way I could put it is hindsight is always 20-20. I think, depending at what time period the OPA was looking at it, we were looking at it down the road and there could be some areas where we had more fulsome information, if I can put it that way. But as I said, a lot of the hard costs with respect to payments were largely known in July 2012.

**Mr. Bob Delaney:** In looking at Oakville, will the team consider the additional savings negotiated by OPA for a lower price of power? For example, I understand it's going from 17,277 megawatts per month at the Oakville site to 15,200 megawatts per month at the Lennox site?

**Mr. Jim McCarter:** Yes, that would definitely be part of the calculation, and we would then present-value that, but certainly we would be looking at that.

**Mr. Bob Delaney:** Okay. As was the case with Mississauga, the Oakville negotiations of course were very complex. We know it takes your office, and it took then and will probably continue to take—a fair amount of time and hard work to calculate the costs, both what you did in Mississauga and what you probably will in Oakville.

We also know that some of the costs and savings for the Oakville agreement haven't been finalized at this point by the OPA due to some of the complexities and variables that you talked about earlier.

We also have to acknowledge that this is a politically charged issue and the opposition's job is to oppose the government at every turn, even though they also agreed to cancel both plants. Given this political environment and the fact that your office is an independent office that all of us here respect, is it important to wait on your find-



ings for Oakville rather than to second-guess the process or the outcome?

**Mr. Jim McCarter:** My sense would be, if we have the information that we think we can come up with a reasonable estimate—I mean, I won't be making that decision, but I would think if we have enough information to make a reasonable estimate, we should do that and we should report. I might as well say that I have been asked the question would we report—should there happen to be an election, we would not report in the writ period, but otherwise, we generally try to report directly to the Legislature as quickly as possible.

Again, as you're saying, if the OPA can't come up with the estimate or is unable to come up with the estimate, what impact would that have on our review? It would have some impact on our review, but I can't speculate on how much of an impact.

**Mr. Bob Delaney:** Was there anything else that you wanted to say to us here today?

**Mr. Jim McCarter:** No.

**The Chair (Mr. Shafiq Qaadri):** Very famous last words. I take it you're done, Mr. Delaney?

**Mr. Bob Delaney:** Mr. McCarter, it's been my pleasure and privilege to read just about every report that

you've written, which certainly could allow you to say, "Man, you need to get a life." I guess, on behalf of everyone here, it's been a pleasure to know you. You will leave here with the respect of everybody on all sides, and Ontarians have been honoured and privileged to have had you as our Auditor General for the past 10 years.

Good luck to you in the balance of your illustrious career. We look forward to keeping in touch with you and hearing about your next accomplishments.

**Mr. Jim McCarter:** Perhaps I could just say, Chair, that I'd have to say, on behalf of the office, certainly in my 10 years, the office has been accorded the respect of all the MPPs, I felt generally, as much as possible in a non-partisan manner. We really have enjoyed working with the members, especially through my association with the public accounts committee. So I do thank you for the support of the office.

**Le Président (M. Shafiq Qaadri):** Merci, monsieur McCarter. Je voudrais vous remercier pour vos services comme le vérificateur général pour la province de l'Ontario.

Thank you. The committee is adjourned.

*The committee adjourned at 1652.*



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**Standing Committee on  
Justice Policy**

Members' privileges

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de la justice**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 18 April 2013

Jeudi 18 avril 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Ladies and gentlemen, colleagues, the justice policy committee is now in session. As you know, we're here to consider issues with regard to energy infrastructure, in particular gas plants.

## MR. DAVID LINDSAY

**The Chair (Mr. Shafiq Qaadri):** I would invite our first witness, Mr. David Lindsay, to please come forward and to be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. David Lindsay:** Yes, I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Lindsay. You have five minutes for an introductory address and then rotation by questions. Go ahead.

**Mr. David Lindsay:** Thank you very much, Mr. Chairman. I appreciate the opportunity to be before you today. Coming in this morning, I saw Janet at the gift shop and a number of familiar faces, so I feel like I've come home. Thank you very much for a chance to come back to Queen's Park.

I began my career here in this building as a junior political staff person in 1984. It was part of the Bill Davis administration at that time, so I've worked in opposition, I've worked in government, I've worked in the Premier's office, I've worked in line ministries; I've served as political staff and I've served as a public servant.

In 2006, at the request of the secretary of cabinet of the day, Tony Dean, and the Premier, I was asked to come back and serve as a deputy minister. I was very privileged and proud to serve eight cabinet ministers in the McGuinty administration. After almost a 30-year career in Queen's Park and the precincts of Queen's Park, I retired in March 2012, having worked with public servants, political people of different stripes and different backgrounds on many different issues.

While I might have retired from Queen's Park, I'm still passionate about the province and passionate about our political institutions. I like to think of myself as a

student of government, a student of the democratic process and a student of our parliamentary system.

The responsibility for decision-making rests with elected officials, and in the bureaucracy, the vernacular we use quite often and quite frequently is, "We'll have to check that with the decision-makers," or "We'll get approval from our decision-makers."

A professional non-partisan public service is incredibly valuable and incredibly important in our system of government. The public service offers its best professional advice and support to the government of the day. I experienced the most professional and non-partisan support from public servants when I was on the political side, and I hope I was able to provide quality professional, non-partisan support when I became a member of the public service.

The ethos or the character and fundamental values of the Ontario public service are something I've experienced from all sides over three decades at Queen's Park. It is an honourable profession undertaken by smart, dedicated and honourable people, and I was proud to call myself a member of the Ontario public service for a time.

I assume, for the purpose of today's committee deliberations, you are most interested in my time as Deputy Minister of Energy from June 2010 until my retirement in March 2012. Upon my retirement, I didn't keep any documents—they belong to the crown, they belong to the ministry—so they remained in the Ministry of Energy. Indeed, I didn't even keep a copy of my own Outlook calendar, so I'm at a little bit of a disadvantage when we get into specific dates and details. In trying to prepare for the committee today, thank heavens for the Internet. I used Google to try to brief myself on a little of a reminder on the chronology of things.

But having said all of that, my ethos as a public servant remains. I want to be as helpful to this committee as I can, so I look forward to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Lindsay. To the Conservative side: 20 minutes. Mr. Fedeli.

**Mr. Victor Fedeli:** Mr. Lindsay, welcome. Thank you so much for your 30-year career. As a former mayor, we crossed paths many, many times. I've always appreciated your candidness and counsel and look forward to the same from you today. It's great to have you here.

I want to get right into it because our time is so limited. I'm going to start with Mississauga for about



half of this and then Oakville, so the first set of questions is going to be all about Mississauga.

Who notified you of the decision to cancel the Mississauga plant?

**Mr. David Lindsay:** In the Ontario public service, my boss is the secretary of cabinet, so that would have been Shelly Jamieson.

**Mr. Victor Fedeli:** And when was that?

**Mr. David Lindsay:** What was the election date?

**Mr. Victor Fedeli:** The 6th of October.

**Mr. David Lindsay:** So the announcement, I guess, was in September, in the middle of the campaign. We all read the newspapers, so we knew what was happening. We knew we're in election mode, so we don't take any action at this point; we'll see who the formal government is. It was the day after the election that the secretary phoned me and said one of the priorities of the Premier and priorities of the government was to deal with the Mississauga gas plant.

**Mr. Victor Fedeli:** Okay. What instructions were you given with respect to the cancellation?

**Mr. David Lindsay:** Well, because we had had some experience with the Oakville gas plant, we recognized it's a legally and financially complicated thing, so creating a team of people to work on it would be the first thing we would do, gather the appropriate information. The contract isn't with the government of Ontario, as the committee already knows; you've had all these presentations. The contract isn't with the government; it's with the OPA. We worked closely with the OPA to make sure the wishes of the decision-makers are being fulfilled.

**Mr. Victor Fedeli:** Were you given any instructions by Minister Duguid and then, after the election, Minister Bentley, any particular instructions with respect to the cancellation of the Mississauga plant?

**Mr. David Lindsay:** So we're talking about the Mississauga plant?

**Mr. Victor Fedeli:** We're talking about Mississauga for 10 minutes.

**Mr. David Lindsay:** No. The first instruction we heard came from the election announcement and the day after the election.

**Mr. Victor Fedeli:** So would you have received any subsequent instruction from either of the ministers?

**Mr. David Lindsay:** No. The new minister was briefed as he became the minister, and we were executing the decision that the Premier had requested coming out of the election campaign.

**Mr. Victor Fedeli:** Okay. Had you ever discussed the cancellation of the Mississauga power plant with either Premier McGuinty or now-Premier Wynne?

**Mr. David Lindsay:** I have not, no.

**Mr. Victor Fedeli:** There's a document that we have; it's called document 1—

**Mr. David Lindsay:** When I started here, I didn't need reading glasses.

**Mr. Victor Fedeli:** Document 1, right at the bottom, says, "Deputy Lindsay spoke of a 'negotiating mandate.'" We also heard that from Mr. Delaney yesterday in

addressing the auditor. It kind of was the first time I'd heard that expression, from Mr. Delaney: "We have here a negotiating mandate." What is that and who gave it to you or who set it? Right at the bottom, do you see it? "Deputy Lindsay spoke of a 'negotiating mandate.'" What does that mean? What was it, basically? What was it you wanted from Mississauga?

**Mr. David Lindsay:** Just give me a second here.

**Mr. Victor Fedeli:** Yes. The whole document is sort of unrelated to that. Just that expression "negotiating mandate" that we heard yesterday for the first time.

**Mr. David Lindsay:** Let me try to answer your specific question. A negotiating mandate, whether you're talking about negotiating a union agreement or a business contract, is, what's the objective you're trying to accomplish, how best can we accomplish that, and then how do we go about doing it? With respect to the Mississauga gas plant, what is it you want to do? Do you want to negotiate with the proponent? Do you want to bring in legislation to change it? What is it you're looking to do here?

**Mr. Victor Fedeli:** So was the mandate set? Not just, "What is it you want to do?" Was there a mandate that said, "Here is what you want to do: Get the best value," or, "Do the deal at any cost"? What was the mandate? There must be a mandate you worked under.

**Mr. David Lindsay:** Well, I think there's a lot of—I don't think; I know. There would be a lot exploring of, what are our options here? How best can we make sure—in the energy system, it's complicated for a number of reasons. You're trying to make sure the integrity of the electrons is maintained in the system, you want to maintain its best financial/fiduciary responsibilities, and the public good and the public interest. Those three buckets of things, you're trying to balance. The OPA has energy experts that manage the system and the electrons, working with Hydro One and the OPG, and then the finance guys have the expertise they bring. The negotiating mandate is to maximize all of those.

0840

**Mr. Victor Fedeli:** Document 2, if you flip over to the next one, is a cabinet minute. It's a Ministry of Energy cabinet minute, and it's from October 2011. Down at the bottom it says, "This report back would include recommendations as to what share, if any, of the cost would be appropriately borne by the government through the Consolidated Revenue Fund." Would this cabinet minute or something like this have gone to cabinet?

**Mr. David Lindsay:** It says "draft" on it, so whether this one went or another version of it, the question to be determined in that bullet point is how much is going to be on the tax base and how much is going to be on the rate base. So that discussion would have been prompted at the cabinet table by—whether this exact one or a similar one to it.

**Mr. Victor Fedeli:** It's the only one we have.

**Mr. David Lindsay:** Okay.

**Mr. Victor Fedeli:** To the best of my knowledge, this is the only one we have. There's 56,000 documents. The word "draft" there or not is not by design.

So what you're saying is, this would have gone to cabinet on or around October 2011, between October and December 2011, as it says here, "The Minister of Energy to report back to cabinet by December 2011 with the details of the discussions ... with Eastern Power." Are you telling me that cabinet would be involved in these discussions or made aware of these discussions because of this cabinet minute?

**Mr. David Lindsay:** They definitely would not be involved in these discussions.

**Mr. Victor Fedeli:** Not involved.

**Mr. David Lindsay:** It's between the Ontario Power Authority and the contractor and the contractee—

**Mr. Victor Fedeli:** So they would be made aware of these discussions?

**Mr. David Lindsay:** Yes, bring them back, either progress or success.

**Mr. Victor Fedeli:** Would you have any knowledge whether they'd be aware of the numbers that we're talking about?

**Mr. David Lindsay:** Probably not at that point—

**Mr. Victor Fedeli:** At this point.

**Mr. David Lindsay:** There are a lot of moving parts. We had lots of things we discovered throughout the process that changed assumptions. So that would have been just, "We'll keep you informed as we build this relationship."

**Mr. Victor Fedeli:** Yes, that's fair.

You talk about a "back pocket 'hammer.'" Do you know what you're referring to in terms of a back hammer?

**Mr. David Lindsay:** That's from your first document.

**Mr. Victor Fedeli:** Yes.

**Mr. David Lindsay:** Again, that's part of the negotiating mandate, what is it we can use. When you go into a negotiation, there's a challenge that if one side has either more knowledge or more information or they have you—to use the vernacular—over a barrel, so what is it we can do that gives us a good counterweight or counterbalance or a hammer—

**Mr. Victor Fedeli:** And what was your hammer, do you think, in this case? What did you have in your back pocket?

**Mr. David Lindsay:** Well, I don't recall specifically, but brainstorming lots of ideas. The business would obviously want to continue to do business with the government, so having tense, difficult relationships with the government means you're not going to have good, forward business. The government has the power to bring forward legislation to change things if negotiations aren't going well.

**Mr. Victor Fedeli:** So that's the bit of a hammer then, you think?

**Mr. David Lindsay:** For negotiating purposes. I would not be recommending that you go to that step, but you certainly need to know what your ability is in a negotiation.

**Mr. Victor Fedeli:** So you also thought the mandate should include a firm cap. What was the firm cap that you would have set, in your opinion, on Mississauga?

**Mr. David Lindsay:** I stand to be corrected. If someone shows me a minute that says I said it—

**Mr. Victor Fedeli:** Oh, I'm still on document 1, page 2. It says, "Deputy Lindsay asked what would be the back pocket 'hammer'—and if it's legislation—that should be addressed in the material for cabinet's consideration. He also thought the mandate should include a 'firm cap.'" This is from Halyna Perun.

**Mr. David Lindsay:** I found it. It's on the second page. I see it here, yes.

**Mr. Victor Fedeli:** Yes.

**Mr. David Lindsay:** Well, again, we were looking for, as we go into this transaction or this renegotiation of this transaction, what are the parameters we've got here?

**Mr. Victor Fedeli:** Did you ever receive a parameter? Did you ever receive a firm cap? You said you thought you should have a firm cap. Did you ever get one from anybody?

**Mr. David Lindsay:** I think it was recognized that we didn't have enough details to even come up with a firm cap. So I don't think it was a deliberate "No, you do not have a firm cap." That is not what we heard, but I think because there was not enough information, we couldn't arrive at one.

**Mr. Victor Fedeli:** Just skipping to Oakville just for one second, but I'll be right back on Mississauga. If you wanted a mandate and a firm cap and a back pocket hammer for Mississauga, would you have looked for or sought the same items for Oakville negotiations back then?

**Mr. David Lindsay:** In any negotiation—I had an opportunity to also be dealing on or about the same time with Samsung, renegotiating with Samsung. So looking for a negotiating mandate—What is it we're trying to accomplish? What are our parameters?—would be a standard thing you would be looking for.

**Mr. Victor Fedeli:** As we jump back to doc 2, the cabinet minute, basically the secretary of cabinet wanted folks to begin working on the material to take to cabinet to scope out a mandate. I'm still on this mandate. The materials would detail the sunk cost, the lost profits. Would you recall any advice sent to cabinet at that time in terms of sunk costs or lost profits?

**Mr. David Lindsay:** I apologize, but it's more than a year ago, so I don't have any specific details in my head.

**Mr. Victor Fedeli:** Okay.

**Mr. David Lindsay:** The Ministry of Energy would have worked closely and cooperatively with the Ontario Power Authority to try and help scope that out. What specifically was shared and how much we tried to maintain confidentially, I do not recall.

**Mr. Victor Fedeli:** Okay. On document 3, down at the bottom—this is from Halyna Perun again—"We have advised Deputy Lindsay that the Minister of Energy does not have clear legal authority to direct the OPA to take any significant commercial steps in relation to the contract."

Wasn't it regular practice for the OPA to take direction from and collaborate with the ministry?



**Mr. David Lindsay:** Yes, collaboration and working closely with the OPA professional body delivering the contracts for the energy system, certainly. Do they have legal authority to tell them what to do on one particular contract? I think that's the intent of that sentence, if I'm reading it correctly: Can the minister just tell them to change a contract they've signed? That would be my interpretation of what that means.

**Mr. Victor Fedeli:** Okay. So if a ministry staffer showed up telling the OPA staff how to search for the documents, would they follow that lead?

**Mr. David Lindsay:** Ministry staff—I'm not sure I understand the question.

**Mr. Victor Fedeli:** I'm asking you, if a Ministry of Energy staffer went over to OPA and told them how to search for documents, would the OPA, in your opinion, follow that lead?

**Mr. David Lindsay:** Public servants and professional people at the OPA try to be supportive and helpful of the government of the day, so they try to understand what they want to accomplish and try to help them. Taking direction on how to file documents and what documents to release is not normal practice.

**Mr. Victor Fedeli:** Not normal practice.

**Mr. David Lindsay:** No.

**Mr. Victor Fedeli:** Okay.

Document 4—this is from Murray Segal: "Spoke to Lindsay who spoke to Wallace. Idea is that Bentley need refer to taxpayer vs. ratepayer as in OPA letter. By referring to that issue and a chat with [cabinet] colleagues, he protects himself re assumption of final risk without now going to [treasury board]."

Do you understand what that sentence says and means?

**Mr. David Lindsay:** Unfortunately, I do.

**Mr. Victor Fedeli:** Can you explain that to the rest of us, then? Because I think we do too.

**Mr. David Lindsay:** Sure. Yes, because it is a practice, and my colleagues in the Ministry of Finance quote the particular clause in the finance act regularly—I forget the number, but it's a practice that the minister should not be committing the treasury or committing the taxpayers to money without having had treasury board approval.

If there were to be some costs, in changing a contract, to the Ontario Power Authority, under normal circumstances the costs incurred by the Ontario Power Authority are borne by the rate base. If it is determined that because some of these costs are due to a government decision and should not appropriately be on the rate base, then they would be borne by the taxpayers on the tax base. But because that hadn't been determined yet, Minister Bentley would not be committing the tax base, but the Ontario Power Authority were concerned they had a fiduciary responsibility to protect the rate base. So they wanted some assurance that that discussion would be allowed to take place at some point. So saying, "Yes, we'll be glad to have that discussion at some point," is not necessarily committing anything from the treasury at

that moment in time. That's my interpretation of that sentence.

**0850**

**Mr. Victor Fedeli:** So the auditor basically alluded to the fact that this is how they got around spending \$275 million but only announcing \$190 million. He said that first they announced the total cost was \$190 million, and then they made a word change, that "the cost to the taxpayer was \$190 million (by the way, we found out the cost to the ratepayer was \$85 million more)." We believe that sentence talks to that: the difference between the taxpayer and the ratepayer. It may have been in a different context here, but that is how it resulted in the extra \$85 million being put on the bill of the ratepayer.

**Mr. David Lindsay:** I've been travelling a lot lately, so I have not had an opportunity to look at the auditor's report, so I can't speak to how he derived that split of money and how that works.

**Mr. Victor Fedeli:** He was here for an hour yesterday and confirmed that yet again.

**Mr. David Lindsay:** Okay.

**Mr. Victor Fedeli:** The "Bentley need refer to taxpayer vs ratepayer": I think we now completely understand what that phrase means.

**Mr. David Lindsay:** Glad to be helpful.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. David Lindsay:** Glad to be helpful.

**Mr. Victor Fedeli:** Well, when I asked you if you knew what that meant, "Unfortunately, I do" was pretty telling.

**Mr. David Lindsay:** It's not something I can talk about at a cocktail party.

**Mr. Victor Fedeli:** No, I would appreciate that you wouldn't want to.

**Mr. David Lindsay:** It's not a skill people value.

**Mr. Victor Fedeli:** On document 5—actually, I'm just going to skip—actually, I just want to talk about document 5. The Ontario Power Authority was thinking about putting—it says "forcing Greenfield into CCAA protection." Do you know anything about that, David?

**Mr. David Lindsay:** I'm not a lawyer and not an expert on these things, but I think again, in the spirit of looking at all options and trying to create a best way to deliver the government's—the elected officials'—objectives while minimizing costs, they were looking at creative ways to do this, and—

**Mr. Victor Fedeli:** Was forcing them into bankruptcy protection—

**Mr. David Lindsay:** Well, it limits the liabilities. It puts a ring fence around things and you sort of freeze things at a moment in time. So it's a business tool that can be used to try and limit the costs—

**Mr. Victor Fedeli:** The auditor was pretty clear about what the liabilities turned out to be yesterday in his disclosure.

I'm going to switch to Oakville here. On document 6, Sean Mullin from the OPO, the Office of the Premier of Ontario, writes to you. Basically, you were clearly looped in with the Premier's office on the Oakville cancellation.



I would ask you, then, to the best of your recollection, David, how many meetings would you have attended with Sean Mullin, Craig MacLennan and Jamison Steeve regarding TransCanada or SWGTA, TC, TCA, all the names that they wanted redacted?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. David Lindsay:** I don't know how many meetings—not a lot; two or three. I became the deputy of energy and infrastructure in June. In early August, I was the beneficiary of heading up two ministries, and I had a brand new minister to brief. Minister Chiarelli, who now is the minister, was the Minister of Infrastructure. So I spent that month pretty well briefing him and helping him establish a new office. So my availability wasn't great in the early part, but by the time they got to—I'm checking my timeline that I've put together here—August, or October, pardon me, around October they were coming to the conclusion that they wanted to terminate the Oakville gas plant, so my involvement became more and more at that point.

**Mr. Victor Fedeli:** Okay, thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Lindsay, thanks for being here this morning.

I want to follow on two documents that Mr. Fedeli introduced, and then I'll go on to my questions. First, this cabinet minute.

**Mr. David Lindsay:** Yes.

**Mr. Peter Tabuns:** If I heard you correctly, this was advice to cabinet, talking about what should be charged to the tax base and what should be charged to the rate base. Did I understand you correctly?

**Mr. David Lindsay:** Yes. I wouldn't use the words "advice to cabinet." It was basically a heads-up to cabinet that there will have to be a discussion about how much goes to the tax base and the rate base. No determination had been made whether it was zero or 100%. It was, "We'll have to have a discussion about that and report back to you."

**Mr. Peter Tabuns:** Again, the split between the tax base and the rate base: Why would they be split over the two of them? You've spoken to that, but I just want—

**Mr. David Lindsay:** Yes. The Ontario Power Authority has a fiduciary responsibility to procure contracts at the best price they can to keep the cost of electricity down. The board of directors and the CEO take their responsibilities very seriously, and if the government makes a decision that will cost additional money, they'd want to understand that, "If you are going to cost more money than we otherwise would have been able to procure these electrons for, shouldn't that be on the tax base as opposed to the rate base?" They would position that—appropriately so—as a question of: "Where should these costs go?" The discussion would then ensue.

**Mr. Peter Tabuns:** Going on, then, to document number 4, there's a whole debate at the bottom of this document, effectively about communications. As I read it, the minister could have said, "Our costs are going to

be X, which the taxpayers are going to pay for, and there may well be other costs that have to be covered." The message we always got was, "There's one cost; that's what we're going to cover." What's recommended here is that there are known costs we're going to be taking on now and potentially costs that are yet to be determined that will be allocated elsewhere. Is that a fair interpretation?

**Mr. David Lindsay:** In its broadest sense, yes. What those specific numbers were, we didn't know at that point. It was too early; we hadn't done the due diligence. But there was an assumption that there would be costs that were clear and those that would have to be subject to negotiation and a negotiation between how much is on the rate base and tax base.

**Mr. Peter Tabuns:** Because, as I read it, if the minister stood up and said, "This is the cost," to be transparent, he could have said, "This is the cost that we've determined to date. There are other things that are under consideration. We don't have a final cost yet. We'll get back to you as that develops."

**Mr. David Lindsay:** I'm not sure what the question is, but the minister had—

**Mr. Peter Tabuns:** Do you think that would have been a more transparent way to present the reality?

**Mr. David Lindsay:** It would have had more detail in how we were going to develop those costs. I'm not sure, in the Legislature, the opposition politicians would have considered it any more transparent.

**Mr. Peter Tabuns:** I'll just say to you, if someone says to me, "These are the final costs," it's a very different message from, "These are the costs we've incurred to date. We know that there are other costs that will come in, and we will release them to you as we get them."

**Mr. David Lindsay:** If you were asking me if I thought, in the first month of our discussions with all our parties, that we knew what the final costs were, my answer would be no.

**Mr. Peter Tabuns:** No, I know you didn't, but in the summer of 2012, we around this table were told that the final cost was \$190 million, when it was pretty clear that (a) the costs were higher than that, and (b) there were costs, the value of which were still to be determined. It would have been far more helpful to say, "This is what we've spent to date. We expect there will be other expenses. We will bring those forward as we get them."

**Mr. David Lindsay:** I retired in March 2012, so as a citizen, that might have been an opinion I'd had.

**Mr. Peter Tabuns:** Fair enough. I appreciate your opinion as a citizen in these matters.

When you were first briefed about Oakville being cancelled—actually, could you tell me again when you were first made aware that Oakville was going to be cancelled?

**Mr. David Lindsay:** Again, I apologize; I didn't keep my Outlook calendar, so I can't give you a specific date. But I would have been aware that the minister's chief of staff and Sean Mullin and Jamison Steeve had been



meeting with the Oakville delegations and other people for a period of time. Knowing that they were considering their options would have been throughout the course of July and August. But when they'd made the ultimate decision that they wanted to proceed wasn't until into October/end of September, I believe.

I wasn't involved in the early-on discussions. I know they'd been considering it, and I know that we were asked some technical questions and we shared technical answers. But when they actually made the decision and when they were going to do it wasn't until—or I was not aware—until the end of September/beginning of October, I think.

0900

**Mr. Peter Tabuns:** Were you aware, at the time of cancellation, what the cost range, or the range of risk was, for ratepayers and taxpayers?

**Mr. David Lindsay:** We had some estimates. If you were to terminate a contract completely—which was not what was decided—then you would owe them the value of the contract. That was—I forget—\$500 million or \$600 million for a 20-year contract. But that was not the ultimate decision. Getting into the due diligence of how much it could have cost once all factors of moving the plant to another location plus the costs of getting out of the old site—we hadn't added those up, but we had rough orders of magnitude of each of those.

**Mr. Peter Tabuns:** The rough order of magnitude: Do you remember what the rough order of magnitude was?

**Mr. David Lindsay:** When we got all these pieces pulled together, I can't recall specifically, but over a period of time, as we pulled it together: What's referred to in the vernacular as the sunk costs of the site in Oakville, roughly \$40 million; the cost of, if you were to pay out the full value of the contract in the Oakville site, \$500 million or \$600 million—I'm going from memory here; and then whatever costs to acquire those electrons somewhere else if you're going to move the site to another location. Whether it was Kitchener-Cambridge-Waterloo or Nanticoke or wherever, there'd be costs to get the transmission lines and those kinds of things. There would be groupings of costs depending on decision points, so it's almost like a gating exercise. As you go through each decision, you figure out how much that piece of it is costing you.

**Mr. Peter Tabuns:** Were you aware of a cost range for cancellation of the Mississauga plant?

**Mr. David Lindsay:** Mississauga: Again, it would have been—I did read in the newspaper yesterday that my boss called them "buckets of costs." The groupings of costs that we were, again, ballparking with the help of the OPA would have been the cost of the construction that had already taken place on the site—so, what do you do with that?—and that was in the order of magnitude of \$180 million to \$200 million, and then whatever you do to acquire those electrons elsewhere would be additional costs, and that was not understood in any great detail in those first couple of weeks. It took time to go through all of that.

**Mr. Peter Tabuns:** At the time of cancellation—sorry, at the time that the announcement was made, there wasn't a calculation. What you're saying to me was, you actually got to know what the costs were after the announcement.

**Mr. David Lindsay:** That's correct, yes.

**Mr. Peter Tabuns:** Is that common, to make hundreds of millions worth of decisions without any previous costing?

**Mr. David Lindsay:** It would not be common, no. It's not unheard of, but not common.

**Mr. Peter Tabuns:** Fair enough. Did you ever have difficulty getting cost information from the OPA?

**Mr. David Lindsay:** The relationship with the OPA was always very positive and very professional, so we didn't have any difficulties. Are the costs difficult to ascertain? Yes. Did we have difficulty working with the OPA? No.

**Mr. Peter Tabuns:** So the OPA was very forthcoming. If they were looking at risks and costs, they kept you, as deputy minister, informed.

**Mr. David Lindsay:** They tried to be very respectful of confidentiality, and I didn't ask for details that they thought were inappropriate. Remember: It's a transaction between two parties, and they would share with me that "Generically, things are going well; generically, things aren't going well. They believe the cost of the turbine is this much; we believe it's that much. We're still far apart." So they were forthcoming, but they also tried to respect the confidentiality of negotiations. I consider it a positive relationship, to answer your question.

**Mr. Peter Tabuns:** Right, and they kept you in the loop.

**Mr. David Lindsay:** Yes.

**Mr. Peter Tabuns:** Who was directing the process on these files? I'll start with Oakville. When you thought of who the key decision-makers were moving things forward, who were the people?

**Mr. David Lindsay:** I began my opening comments by telling you what my reference is to decision-makers. The politicians, the elected officials, are the decision-makers. Who's directing how to get the work done to deliver the desires of the decision-makers, that's where the conversation starts to get fuzzy. So let me try and break that out.

**Mr. Peter Tabuns:** Sure.

**Mr. David Lindsay:** There's a term we use inside the bureaucracy called a four corners meeting. What that means is, you try to make sure that all parts of the machinery of government are represented. So a line ministry has responsibilities—whether it's correctional services or environment or energy—and has a minister and a deputy minister. The minister represents the political side and the deputy minister represents the bureaucratic side. Then we report to cabinet, and the head of cabinet is the Cabinet Office and the Premier's office. So there's your four corners. I report up as the deputy to the secretary of cabinet, and the minister reports to the Premier and his cabinet colleagues. The Premier and the

secretary of cabinet as his deputy work together, and I work with my minister.

So we got direction from the Premier and the Premier's office that they wanted to move the Oakville plant and then we worked with all of the team to deliver on that. So who was the decision-maker? The Premier and the elected government of the day. Who was helping to implement? It was the team with all their expertise: the Ontario Power Authority, the Ministry of Energy and the finance ministry when we were talking about financing. So we have a whole team of people working as a collective to deliver on the desires of the government.

I hope that answers your question without sounding too elliptical.

**Mr. Peter Tabuns:** No. It all goes back to the Premier's office is what you're saying to me. Shelly Jamieson didn't initiate this. You didn't initiate this.

**Mr. David Lindsay:** No.

**Mr. Peter Tabuns:** The minister didn't initiate this.

**Mr. David Lindsay:** No.

**Mr. Peter Tabuns:** It was the Premier who initiated this.

**Mr. David Lindsay:** The Premier and his political officials, yes.

**Mr. Peter Tabuns:** Right. In fact, was your minister kept in the loop on this?

**Mr. David Lindsay:** Not in great detail. Again, I tried to make sure that he was aware of negotiations, but we—again, in a confidential business negotiation, you don't want to have lots of people knowing lots of details. So I made sure I told my minister what was happening.

**Mr. Peter Tabuns:** So he was aware in the summer of 2010 that a potential cancellation was in the works?

**Mr. David Lindsay:** I would not have had that conversation. You recall I had Minister Chiarelli on the infrastructure side, so I was quite busy helping Minister Chiarelli get his office up and running. The officials in the Ministry of Energy were asked a number of questions on how to help create options and think things through, and as chief of staff, I would assume—again, think of that four corners—I would think the chief of staff would be working closely with his political colleagues, including his boss, the Minister of Energy.

**Mr. Peter Tabuns:** Okay. Did you have staff in the Ministry of Energy who, if asked, could have looked at the Mississauga situation or the Oakville file and given you an estimate of the range of costs? Did you have to rely on the OPA for these calculations?

**Mr. David Lindsay:** The interesting thing about the Ministry of Energy is that the entire complement of staff is about 135 or 145, and every single one of the agencies that work on the energy file on behalf of the ratepayers of Ontario has order-of-magnitude larger numbers of staff. The OPA is 200-plus. The Ontario Energy Board's larger than the ministry; Hydro One, OPG. So we would be excellent public servants in the Ministry of Energy, and they try their best to gather the information, but they really do rely on a good, co-operative relationship with the agencies that deliver the product. So we could do

some independent, back-of-the-envelope analysis, but it would be based on information we'd be getting from—Hydro One would share with us the costs of transmission lines; OPG would share the costs of alternative sources of energy; the OPA. So we could do it, but we wouldn't be doing it in isolation.

**Mr. Peter Tabuns:** So if you wanted to find out what the scale of risk was on cancellation of either of these plants, you would have turned to the OPA, and from what you've said earlier, the OPA was forthcoming with questions for analysis and keeping you informed of what was going on.

**Mr. David Lindsay:** Yes.

0910

**Mr. Peter Tabuns:** Shelly Jamieson testified that there were discussions about cancelling the Mississauga plant as early as the spring of 2011. Were you aware of those discussions?

**Mr. David Lindsay:** Not at the time. A little bit after, I did hear about them. I think it was a combination of summer vacations, to be fully transparent, but also, it was more a question of the environmental assessment process, as I understand it. Again, you would ask the environment folks, what could you do with an environmental assessment process? While officials—in those four-corner kinds of meetings—from the Ministry of Energy would probably be invited to participate and share their perspective from an energy perspective, it would be a question being asked of the Ministry of the Environment.

**Mr. Peter Tabuns:** So you were aware, then, that even in the spring of 2011, there were serious discussions going on about cancelling this plant.

**Mr. David Lindsay:** Yes. How serious they were, I don't know, but there were discussions, yes.

**Mr. Peter Tabuns:** Your ministry produced an extensive briefing on cancellation.

Do you know why the Liberals waited till the middle of the election campaign to cancel? Were you told?

**Mr. David Lindsay:** I definitely wasn't told. Anything I say would be speculation, so I don't know why. I don't know if they actually had considered it, rejected it and then revisited it, or if they had never dismissed the thought. I do not know what's inside the heads of those decision-makers.

**Mr. Peter Tabuns:** Well, you weren't told, and that's the answer that I need.

We've heard, and I've seen a memo indicating, that you had bi-weekly meetings with Colin Andersen. Did those go on throughout your time as deputy minister?

**Mr. David Lindsay:** Both of us had at that time busy schedules, so it was a standing commitment on our calendars that on occasion had to be cancelled or moved, but yes, we had a very good, cordial, regular working relationship. Colin is a colleague and we've worked together for many years.

**Mr. Peter Tabuns:** And can you tell us generally what you discussed in those meetings?



**Mr. David Lindsay:** Well, it would be more of—the word we would use would be “update.” So whether it was the green energy implementation of feed-in tariff transactions in the Green Energy Act and how that was going, a procurement of other energy, gas plants and things like that—there’s lots of things to update each other on as a professional courtesy, and that would depend on what was happening in any particular given week.

**Mr. Peter Tabuns:** We’ve been given the impression in the last while that the OPA has all kinds of information and somehow it doesn’t get through to anyone in the minister’s office. You never found a wall between yourself and the OPA on information.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. David Lindsay:** The way the question was asked is interesting. There are walls, sometimes on purpose, because of confidential contracts and things like that. But it was a good, professional relationship with the OPA, and where it was appropriate to share, they would. Again, that is at their discretion sometimes on contractual relationships or what they’re working on.

The flipside of that is, quite often, I found as deputy that the minister’s office staff would be phoning in to the agencies, gathering information that I wasn’t aware of. So there are lots of people, everybody’s phone number is on the website, and you can contact lots of people and share information up, down and all around. I think trying to be professional and not speak flippantly, the OPA would want to make sure they did their due diligence and were very exact in how they were communicating, as they professionally should, and sometimes—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Lindsay and Mr. Tabuns. To Mr. Delaney.

**Mr. David Lindsay:** —that was interpreted as not fast enough.

**Mr. Bob Delaney:** I’ll let him finish. Was there anything you wanted to finish in your remarks?

**Mr. David Lindsay:** The conclusion of my sentence was that because they would be diligent in making sure they were gathering the information appropriately, sometimes that was perceived as not responding fast enough.

**Mr. Bob Delaney:** Okay. I think that was a good point, and thank you for adding it.

Good morning, Mr. Lindsay. I want to thank you for being here today. A few questions just to make sure that we’re on the same wavelength here.

You’re aware that in May of last year, the estimates committee passed a motion requesting all correspondence within a specific time frame from the Minister of Energy, the Ministry of Energy and the OPA relating to the Oakville and Mississauga gas plants.

**Mr. David Lindsay:** I’m aware through the media. I had been retired by then, so my awareness is through the benefit of the fourth estate.

**Mr. Bob Delaney:** And at that time, again, you were aware that there were complex and sensitive negotiations ongoing between the OPA and the companies?

**Mr. David Lindsay:** Yes.

**Mr. Bob Delaney:** From your perspective and in your experience, what would it have meant for taxpayers if the OPA and the province’s negotiating position had been prejudiced because the companies on the other side had had access to confidential and privileged information?

**Mr. David Lindsay:** That would not be a good thing, either for the ratepayer or the taxpayer, whoever would bear the burden of those costs, because I think sharing information when you’re trying to do a negotiation, whether it’s this transaction or any other kind of negotiation—I think the vernacular is, keeping your cards close to your vest. You want to make sure you’re in the best position you can to negotiate a good deal. If the other side knows all your cards, it’s not a very good negotiation.

**Mr. Bob Delaney:** So, in effect, there would have been a significant risk to the taxpayer if all of those documents had been made public prior to the two deals being finalized?

**Mr. David Lindsay:** That they’d be made public? That’s correct.

**Mr. Bob Delaney:** Okay, thank you. I just want to talk a little bit about the negotiation process with Eastern Power to relocate the Mississauga power plant. The Auditor General talked about some of the significant risks had the government simply abrogated the deal rather than negotiating a new deal. Talk to me a little bit about some of the implications and the downsides of simply abrogating a signed deal.

**Mr. David Lindsay:** Oh, gosh. Again, I’m not a trained lawyer, so I may not be using the correct legal terminology, but if you have a contract and you don’t honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure, again, as a result of that loss of contract.

**Mr. Bob Delaney:** So in other words, not merely the terms negotiated, but possibly, over and above that, penalties and significant litigation costs?

**Mr. David Lindsay:** Well, that would all be subject to litigation, but the courts would decide if there were court costs to be allocated or the loss of other opportunities or any of those kinds of things. Again, I’m not a lawyer and I haven’t gone through that kind of process, but that would be a court case that the person who had their legal contract abrogated or not honoured would be able to go to the courts for lost costs and damages and those kinds of things.

**Mr. Bob Delaney:** So really just ripping up the deal was a bit of a non-starter as an option.

**Mr. David Lindsay:** A very interesting question. Again, I’m not a trained lawyer, but the power of the crown and the ability of the elected Legislature to pass legislation is, to go back to a word we were talking about earlier, a very large hammer. Having the Legislative Assembly determine what the scope of the costs or the compensation could be is an option, I understand. I stand to be corrected by legal counsel, but I understand you could do things by legislation that private sector companies can’t do.



**Mr. Bob Delaney:** Okay, all right. The Auditor General talked a little bit about what he perceived as the OPA's weakened negotiating position because of the tight timelines to halt construction. He referred numerous times, in his news conference and in his appearance here, to what it would take to get the company to—to use his words—"down tools."

In her testimony, Shelly Jamieson talked about the importance of speed when negotiating a relocation deal with the company. She said to the committee that—and I'll use her words—"as long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed to me was important." Could you talk to me a little bit about timing as an important factor and your opinion on whether cancellation costs would have increased had construction continued?

0920

**Mr. David Lindsay:** If construction—sorry, I missed the last part.

**Mr. Bob Delaney:** Had construction on the Mississauga power plant continued.

**Mr. David Lindsay:** I'll break my answer out into a couple of component parts. One was the political pressure that the government was feeling. After the election, the Premier made clear his commitment to not have a gas plant there, and yet the construction continued. So there were articles in the newspaper, there was pressure to—"You said this was going to stop, and it hasn't stopped." That would be what I'd call the political pressure on the government. They were asking us and the OPA to find a way to get this thing to stop as quickly as they could, so that's a political pressure.

Then, the point you raised is also the very practical: The more they're pouring concrete and the more they're putting money into the ground that we know we're not going to use, the more those costs increase. So, yes, there were two pressure points or two drivers to the need for speed in negotiation to down tools and stop this construction.

**Mr. Bob Delaney:** You've handled similar negotiations, or negotiations with private companies of an equivalent scope?

**Mr. David Lindsay:** The short answer is yes.

**Mr. Bob Delaney:** Okay.

**Mr. David Lindsay:** I was working on the Samsung deal around the same time that this was happening.

**Mr. Bob Delaney:** If the other side perceives political pressure to either do something or not do something, does that or can that affect the latitude that the government has to complete a deal? And if so, how?

**Mr. David Lindsay:** As I said in my opening statement, I like to think of myself as a student of the democratic process and a student of Parliament and a student of government, and the thing we have in Canada that they don't have in the United States is question period. Every transaction that the public sector engages in, with any private sector proponent, be it electricity or

highways or anything else, the private sector proponent invariably sees political pressure as a tool to use.

**Mr. Bob Delaney:** Okay. In your recollection, would all three parties, should they have formed government, have cancelled the Mississauga plant?

**Mr. David Lindsay:** In my recollection, would they have cancelled—I'm not sure I can answer that question. I have seen political parties make commitments in election campaigns that don't get followed through on.

**Mr. Bob Delaney:** Okay.

**Mr. John Yakabuski:** So have we.

**Mr. Bob Delaney:** All right. Faced with a government, regardless of who formed it, would it be normal for the civil service, during the campaign, to have kept track of commitments and to have been ready to implement the incoming government's commitments?

**Mr. David Lindsay:** The short answer is yes.

**Mr. Bob Delaney:** Okay. So, presuming that any other party had formed government with that as a commitment, can you see anything significantly different in the process of accomplishing that end—the cancellation of the Mississauga gas plant post-election?

**Mr. David Lindsay:** Again, getting direction from the newly elected government—whoever it is, whatever political stripe—they would ask us, "We would like to act on this promise. Please prepare how you would do that." So, yes, that would be a standard process and protocol.

**Mr. Bob Delaney:** So then it would be normal for the incoming government to say to either the secretary of cabinet or a minister to the deputy, "This is what we would like to do," and to have the public service say, "Premier or minister, this is how you can do it and these are the ways in which it can be done"?

**Mr. David Lindsay:** Again, the ethos of the Ontario public service is to serve the elected officials. Part of our responsibility is to give good advice, and part of our responsibility is to have execution of the decision to the best of our ability. What would probably happen in most policy commitments of a government is that we would say, "Here's what we hear you would like to do. Here's how it can be done. Here are the pros and the cons of doing it this way and here are the pros and the cons of doing it that way," and then we get a decision back: "We like doing it this way. We're willing to accept these pros and we're willing to accept these cons." That's how we would engage in the dialogue. We wouldn't say, "You asked us to do this. We'll go do it." We try to maintain the dialogue with decision-makers all the way along.

**Mr. Bob Delaney:** Okay. So to move from the slightly hypothetical back to the practical: After the election, the OPA, I think we can agree, was in a bit of a difficult position in which they had no option but to negotiate and of course to get the best deal possible and, as we've discussed, as quickly as possible. From your experience, would you say that good-faith efforts were made to get the best deal possible?

**Mr. David Lindsay:** I was not there when they actually finally negotiated the deal. That happened after



my leaving in March, but I believe all the people involved would be working in good faith. The options presented to the government on how you could deal with it would have been presented to the government, and then they'd say, "We'd like to pursue this option. So, go do it."

**Mr. Bob Delaney:** From the vantage point of the OPA—and again I'll ask your opinion—do you think the OPA's bargaining position would have been significantly different if the government of the day had been either a PC or an NDP government?

**Mr. David Lindsay:** It depends on if they followed through and asked them to change the contract.

**Mr. Bob Delaney:** Right. And I'm making the assumption that a government of any of the three parties would say, "It's our intention to cancel this plant."

**Mr. David Lindsay:** I'm not sure how to answer the question, to be honest. No matter what negotiation you enter into, it will be tough. It could become political very quickly, and any time it becomes political, it compromises the negotiations of the people at the negotiating table. In any political environment, that's a factor that creates challenge for negotiators. That's why you try to maintain confidentiality.

**Mr. Bob Delaney:** Yes, exactly. A few questions about Oakville. One of the reasons cited for relocating the Oakville plant was that, in the process of putting together the long-term energy plan, it became clear that with the changes of supply and demand, the plant was no longer needed. Could you comment on that?

**Mr. David Lindsay:** That's a little bit of shorthand for a much more detailed and complex process.

**Mr. Bob Delaney:** Yes.

**Mr. David Lindsay:** As you recall, the economy started to change. The economy shrank. The use of electricity, the mix of our industrial base, started to shift, so where you needed the power and at how much started to move.

To say we did not need the plant is an interesting question. We did not need that much power at that location at that time. Did we still need power over the next number of years? Yes. Could we get it other ways? If you want to drive from here to Kingston, you can do it a number of ways: 401; Highway 2; you can take a plane, a train or a bus. There are lots of ways you can do it. If you then decide you only need to go from Toronto to Belleville, you still need to go in that direction; you just don't need to go that far. It's a more complicated answer than, "We didn't need the plant anymore." We didn't need those electrons at that time.

**Mr. Bob Delaney:** All right. So let's take a portion of that. In her testimony before the committee, JoAnne Butler from the OPA confirmed that transmission upgrades were needed in the southwest GTA area, with or without a new plant in the Mississauga or Halton area. Based on your experience on the file, would you agree with JoAnne Butler's assessment?

**Mr. David Lindsay:** The source of my knowledge on that comes from the OPA, and whether it's Amir Shalaby

or JoAnne Butler, they're the professionals and that's the source of my information. So, yes, I would agree with JoAnne Butler.

**Mr. Bob Delaney:** Okay, thanks. Again, just sort of parsing that Oakville situation a bit, a recurring issue that has come up a lot with regard to Oakville was a concern that TransCanada Energy would also initiate litigation with the government if we weren't able to renegotiate on a new power plant.

I understand that the best efforts were made at every level to avoid a lawsuit. I'm going to ask you a question similar to what I asked you before: What would the implications have been for taxpayers if the province and TransCanada Energy had had to litigate over this particular project?

0930

**Mr. David Lindsay:** The language we were using at the time was, if you simply throw this into a court proceeding, what happens is you end up paying whatever costs without getting any electrons. So is there a better way to resolve this? TransCanada is a reputable company and our electricity system needs good suppliers out there, so maintaining good relationships with suppliers was part of the consideration. Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do.

**Mr. Bob Delaney:** And just for clarification, when you said paying costs and not getting any electrons wouldn't be a good business strategy, you meant it from the perspective of both sides.

**Mr. David Lindsay:** I don't know, if I were the shareholder of TransCanada, I wouldn't necessarily see that as a bad deal. What do you mean by "both sides"?

**Mr. Bob Delaney:** In other words, you talked about the ongoing relationship. You said that TransCanada was a reputable supplier. Would that suggest that both sides would view a relationship with each other as part of an ongoing stream of business activity?

**Mr. David Lindsay:** Wanting to maintain good relations? Yes, I believe so.

**Mr. Bob Delaney:** Okay.

**Mr. David Lindsay:** I'm not inside the mind of TransCanada, but I would think that's good business practice.

**Mr. Bob Delaney:** Okay. I'd like to ask you about David Livingston's involvement in these negotiations as the head of Infrastructure Ontario. Shelly Jamieson told the committee that she personally asked him to help when negotiations broke down between the OPA and TransCanada. When asked why she chose Mr. Livingston to take this assignment, she said, "David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way." Would you agree that Mr. Livingston was well-suited to support these negotiations,

given his expertise and his portfolio of experience and skills?

**Mr. David Lindsay:** Yes.

**Mr. Bob Delaney:** Okay. Thank you.

On February 7, Premier Wynne wrote a letter to the Auditor General requesting that his office conduct a review of the Oakville relocation, and of course that review is under way. That, as we're both aware, has become a very politically charged review. Given the political environment—and you've see it from just about every vantage point—and the fact that the Auditor General is an independent officer of the Legislature, in your opinion, is he the best person to conduct this review?

**Mr. David Lindsay:** Of the Oakville gas plant?

**Mr. Bob Delaney:** Yes.

**Mr. David Lindsay:** Yes, I believe so.

**Mr. Bob Delaney:** Okay. Good.

In terms of future costs and savings associated with the Oakville relocation, the OPA's VP of communications, Kristin Jenkins, said yesterday that many variables had not yet been calculated. She said, and I'll use her words, that "at the time that the [memorandum of understanding] was signed, the exact"—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Actually, Chair, I'm going to hold that till the next round then.

**The Chair (Mr. Shafiq Qaadri):** For which we thank you. Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Thank you, Chair.

I had asked you earlier about meetings with Sean Mullin, Craig MacLennan and Jamison Steeve and you said maybe two or three. Maybe I wasn't clear in terms of the scope. I've got email, document 6, from October 6, 2010. The content of the email is not important. It's from Sean Mullin to you, with a copy to Craig MacLennan, Jamison Steeve. Then I've document 8, which is now six months later, in April, that includes you, Sean Mullin and Craig MacLennan. So maybe I would have been more clear. Instead of just asking how many times did you meet, how much correspondence—I've got two right here within six months. Is there more? I know you answered you only met with them two or three times, but—

**Mr. David Lindsay:** I met with Sean Mullin on many occasions when we were doing the IPSP and other things. I think you were asking, did I meet with him on Oakville?

**Mr. Victor Fedeli:** Yes, this particular one is TransCanada, October 6, then TransCanada is April 11. I didn't bring a bunch of email; I didn't think I would really need to do that. Would you say that there was more regular contact between those six months or did I just pick the two extremes? And if I did, I apologize.

**Mr. David Lindsay:** I'm not sure how best to answer your question, but let me try. All my emails, all my Outlook, all my documents, reside with the Ministry of Energy, and I didn't take any of them with me. They're all there. I'd left by March of 2012, so anything that was in my email list that was brought up by the search is at your disposal.

**Mr. Victor Fedeli:** That's fair. So would you characterize—

**Mr. David Lindsay:** I don't think I had 56,000, but I obviously had two.

**Mr. Victor Fedeli:** You did have "communication," let's say, rather than the meetings: communication with Sean Mullin, Jamison Steeve and Craig MacLennan regarding TransCanada energy over a half-year period at least.

**Mr. David Lindsay:** I don't think I ever met with all three of those people to talk about Oakville in any one meeting. I've had many conversations with Sean Mullin on many things, as the energy policy person in the Premier's office, and the chief of staff to the minister, you meet with every day. Jamison Steeve and I maybe had two or three conversations, but I don't think we ever had a meeting where we were all together. I stand to be corrected on that, but I don't think so.

**Mr. Victor Fedeli:** Okay. Let me look at document 8, the telephone meeting that you had here with Sean Mullin, Craig MacLennan, David Lindsay—and a whole bunch of other names are going to come up. The conversation is about, "OPA and TransCanada are far apart." This is April 11, 2011; OPA and TransCanada are far apart.

We know that an offer was made to TransCanada—a settlement offer—of \$712 million. That was rejected on April 21. What would you be able to tell me about that offer?

**Mr. David Lindsay:** Unfortunately, I haven't been able to refresh my memory by looking at any documents. Again, that's more than a year ago. But I know the OPA had ongoing negotiations with TransCanada about the costs of the Oakville site. I think those were more circumscribed and clear than the cost of the turbines they had procured. What the market value of a turbine was versus what they paid for it was a point of debate, I know. And what they thought the value of the contract was to them as TransCanada and what the OPA thought they were going to be paying on their discount rate for the transaction—so there was three or four different pieces they were having disagreements over and not sharing—

**Mr. Victor Fedeli:** So do you remember this \$712-million offer?

**Mr. David Lindsay:** Do I remember the specific \$712-million offer? No, I do not. Do I know that they were offering back and forth? Yes.

**Mr. Victor Fedeli:** Do you remember the \$1.4-billion estimate? Do you remember seeing any paper on that?

**Mr. David Lindsay:** No. I'm not saying it doesn't exist, but I just don't recall it.

**Mr. Victor Fedeli:** Oh, it exists, yes. I just didn't bother to bring that one here again today. I've brought it so many times.

There's a TransCanada quote that, in a meeting with Minister Duguid—you were Minister Duguid's deputy minister, I presume.

**Mr. David Lindsay:** Yes.



**Mr. Victor Fedeli:** For his whole term? In April of 2011?

**Mr. David Lindsay:** Yes.

**Mr. Victor Fedeli:** So in the meeting with TransCanada—

**Mr. David Lindsay:** He was the minister longer than I was—he was there before I was deputy—is what I was pausing to think about.

**Mr. Victor Fedeli:** So TransCanada—the famous quote is that they “blew a gasket” when talking to Minister Duguid. They told him that they “already have a deal” done—“go talk to your bosses.” Who would Mr. Duguid’s boss be at that time?

**Mr. David Lindsay:** I go back to my four corners: The minister reports to the Premier and I report to the secretary of cabinet.

**Mr. Victor Fedeli:** So it seems somebody folded over one of those corners if TransCanada “blew a gasket” when talking to Minister Duguid. Were you aware at the time that TransCanada had already done a deal with Minister Duguid’s boss?

**Mr. David Lindsay:** No, and I pause particularly on the words “done a deal with.” I’m not sure what that means. I know they had discussions, but I don’t think they actually had a deal. If they had a deal, why were we going through all this process?

**Mr. Victor Fedeli:** That’s kind of what we’re asking—the same kind of thing. TransCanada said they had “a deal—go talk to your boss.”

You would keep—first Minister Duguid and then Minister Bentley—apprised of any negotiations and/or costs that you would’ve been aware of relating to the Oakville and Mississauga cancellations?

0940

**Mr. David Lindsay:** Periodic updates, minute details of estimates of values of turbines and things like that, no, I don’t think I would have gone into those kinds of details, but, yes, keep them apprised on progress of negotiations.

**Mr. Victor Fedeli:** Okay. But you were not aware of the deal that TransCanada said they had with the Premier’s office?

**Mr. David Lindsay:** No.

**Mr. Victor Fedeli:** Okay. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone.

**Mr. Rob Leone:** Mr. Lindsay, you stated that you take a lot of credence in what JoAnne Butler had and the information she provides you. She testified in this committee that she would assign the total costs as more than simply being sunk costs; there were other costs associated with the transaction. So you were aware that there were more than sunk costs associated with this?

**Mr. David Lindsay:** Yes.

**Mr. Rob Leone:** Now, would it be fair to say that if you knew that there were more than just sunk costs associated with these deals, the cabinet would know that there were more than sunk costs associated with the cancellations?

**Mr. David Lindsay:** Whether all of cabinet knew, I don’t know, but certainly the officials in the Premier’s office and the minister’s office would have known. I’ll go back to my four corners, yes.

**Mr. Rob Leone:** So it simply wouldn’t be credible if all we were told that the total costs would have been were simply the sunk costs; that they would have known that there were extra costs associated with it is essentially what you’re saying?

**Mr. David Lindsay:** Without knowing the caveats they would put on their sentences, I’m not sure I can give you a blanket yes or no to that.

**Mr. Rob Leone:** Well, you just stated that they knew that there were more than sunk costs.

**Mr. David Lindsay:** Yes.

**Mr. Rob Leone:** So we would infer that if they simply gave us the sunk costs, they were essentially excluding the other costs associated with the cancellation. That would be fair?

**Mr. David Lindsay:** I go back—

**Mr. Rob Leone:** There were more than just sunk costs, essentially?

**Mr. David Lindsay:** And if you get electrons for those other costs, if you get equivalent value on another site, then the sunk costs of how much it cost to get out of the site—that is a sunk cost. The cost of getting the electrons somewhere else from the same supplier is a cost of acquiring that electricity. I think that’s the difference in why they mentioned \$40 million as opposed to the other. Can we get the electrons at the same price or a comparable price somewhere else?

**Mr. Rob Leone:** Okay. Were you aware that political staffers were negotiating around the OPA and the Ontario public service on the second floor of this Legislative building with respect to TCE?

**Mr. David Lindsay:** Wow. Those specifics, no, I wasn’t aware. I knew they had asked us for some factual information because they were going to have meetings with stakeholders. Whether they were the Clean Energy Alliance of Oakville or the proponent or who they were was not always made clear to us.

**Mr. Rob Leone:** So three people were screened from talking to Oakville, you’re aware of that, and Shelly Jamieson told us they were screened because they made certain promises to TCE. Do you know what those promises were?

**Mr. David Lindsay:** No. We had the Attorney General do an investigation, and I understand from Shelly’s testimony that you guys have those documents. I’ve never actually seen them.

**Mr. Rob Leone:** So the Attorney General’s office would know what these promises were?

**Mr. David Lindsay:** Not the whole office, but the attorney would have.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

To Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Lindsay, would you pass information on to the minister about substantive cost

information? The OPA says to you, "We paid out \$200 million so far on settling the Mississauga deal, and we've got other costs to come." Would you have informed the minister?

**Mr. David Lindsay:** Do I recall a specific incident? No. But would it be my practice? Yes.

**Mr. Peter Tabuns:** Yeah. That's what I would expect as well. I would expect my staff to keep me informed when I was spending a few hundred million bucks.

**Mr. David Lindsay:** I may not have said it with great comfort in my voice, but I would have explained that, "This is getting expensive, sir."

**Mr. Peter Tabuns:** I'm pleased to hear that's your practice.

Did you brief Premier Wynne on these matters after she took office?

**Mr. David Lindsay:** No. I left in March 2012.

**Mr. Peter Tabuns:** So you weren't brought back to brief her in the transition period?

**Mr. David Lindsay:** Not so far.

**Mr. Peter Tabuns:** Fair enough.

**Mr. David Lindsay:** It's happened before.

**Mr. Peter Tabuns:** I know. You have an extraordinary history.

On September 13, 2010, as we've been going through the documents, the Ontario Power Authority briefs the energy deputy minister that the plant in Oakville was still needed. Do you remember being—

**Mr. David Lindsay:** When was this?

**Mr. Peter Tabuns:** September 13, 2010, which was a few weeks before TransCanada Enterprises was told "adios."

**Mr. David Lindsay:** Okay.

**Mr. Peter Tabuns:** Do you remember being briefed at that time?

**Mr. David Lindsay:** That the Oakville plant is still needed?

**Mr. Peter Tabuns:** Yes.

**Mr. David Lindsay:** So much water has gone under the bridge. I don't recall that, but I can't say that I wasn't briefed to that effect.

**Mr. Peter Tabuns:** Okay. Up to the time of the cancellation, was it your belief that the plant was needed?

**Mr. David Lindsay:** Again, my answer would be similar to the one I gave to Mr. Delaney: that there is a need for electrons in the southwest GTA. Whether it has to come from that site and that plant at that order of magnitude—there's many ways to drive to Kingston, fly to Kingston or take the train to Kingston is the analogy that I used. Is there still a need for electrons in the southwest GTA? Yes. Does it have to come from that plant? Not necessarily.

**Mr. Peter Tabuns:** And was the OPA, prior to the announcement of cancellation, trying to stop that cancellation from happening? Actually, there's a prior question: Do you know if the OPA was aware that it was about to be cancelled?

**Mr. David Lindsay:** "Aware" is different from "suspecting." I think there had been lots of media

speculation and there had been lots of inquiries, so one might speculate that something was coming, but would they have known? I wouldn't think so. Political decisions are not decisions until they're made.

**Mr. Peter Tabuns:** So was there any push from the OPA, prior to the cancellation, to try to keep the plant in place, to your recollection?

**Mr. David Lindsay:** Not to my recollection, but I think giving professional advice on the need for electrons in the southwest GTA would be their normal practice.

**Mr. Peter Tabuns:** Around the end of September, beginning of October, Jamison Steeve has told us that he was told to tell TransCanada that there would be a ministerial order to stop the Oakville plant. He noted in his testimony to us that he met with you to review the message to TransCanada Enterprises. Can you tell us what he told you in that meeting?

**Mr. David Lindsay:** Oh, gosh. Again, September/October of 2010 is a long time ago, and I do not recall the specific conversation, but again, I'd be speculating that the standard briefing would be to explain that we want to respect the integrity of the system, maintain a good business relationship, but we've decided that this site is not the best place for us right now, so we'd like you to talk to the OPA about looking at other alternatives. That's a little bit of reconstruction from my memory, but that would be the type of advice that we'd probably be giving.

**Mr. Peter Tabuns:** The Mississauga plant, and the financing at 14%, did you have concerns that this was not a great business deal—or no, more to the point, that this was a risky business deal for Ontario?

**Mr. David Lindsay:** Well, when we first were made aware of it, which wasn't until closer to Christmas of 2011, in late November—as more information unfolded from the discussions with the Mississauga proponents, we were made aware that it did sound like very large costs, and it did concern me.

**Mr. Peter Tabuns:** Did you find it very strange that a company with a guaranteed power contract had difficulty getting financing?

**Mr. David Lindsay:** Yes. I can't tell you why they were having those difficulties—

**Mr. Peter Tabuns:** No, and I don't know either.

**Mr. David Lindsay:** —but it did seem odd.

**Mr. Peter Tabuns:** Generally speaking, companies that got guaranteed power contracts with the OPA, did they have trouble getting financing?

**Mr. David Lindsay:** Not that I'm aware of.

**Mr. Peter Tabuns:** I apologize for jumping around, but I know my time is limited and there are a few bases I need to touch.

**Mr. David Lindsay:** I'll try to keep my answers shorter.

**Mr. Peter Tabuns:** It's noted in the documents released—energy, Oakville—that David Lindsay heard from Pat McNeil that the turbine valuation was suspect and asked for invoices. Do you have any recollection of



that? This is with regard to the TCE purchase of turbines for their plant.

0950

**Mr. David Lindsay:** The specific conversation with Pat McNeil I don't recall, but I think the concern that a number of us had, based on advice from JoAnne Butler that this is not the normal price of a turbine of this size—I said, "If I were getting an estimate on any of the renovations done in my home, I'd just ask for an invoice, so why can't we get that?" That was the question I asked a number of times.

**Mr. Peter Tabuns:** And did you ever get provided with that invoice?

**Mr. David Lindsay:** I never did get an answer, no.

**Mr. Peter Tabuns:** Tiffany Turnbull, in her testimony, said that you met regularly with Chris Morley regarding the gas plant cancellations. Did you brief him on the costs and risks that you were being informed of by the OPA?

**Mr. David Lindsay:** Rough orders of magnitude?

**Mr. Peter Tabuns:** Yes.

**Mr. David Lindsay:** Yes. It would have been a normal course of our briefings.

**Mr. Peter Tabuns:** Yes. I don't think you would have said, "Hey, we've got another 50 bucks here," but you might have mentioned, "This is \$100 million; this is \$200 million."

**Mr. David Lindsay:** Yes.

**Mr. Peter Tabuns:** So you did keep a very senior person in the Premier's office well aware of the scale of costs that you were encountering as you went along.

**Mr. David Lindsay:** Again, I go back to my earlier answer. If it's a cost that doesn't get anything for it, that's one way to value it. If this is the cost of getting these electrons somewhere else, what's the difference in this price versus what we would have gotten if we kept it in Oakville? That's a slightly different point.

**Mr. Peter Tabuns:** No, it is, but I'll note that so far, we've been told about \$40 million in sunk costs in Oakville. We have a contract with TransCanada in Napanee that pretty much mirrors what we would have gotten in Oakville except for one thing, and that's that Ontario takes on the cost and risk for gas management and distribution, which we've had variously calculated in the \$300-million to \$400-million range. We're getting electrons, but this is a cost we didn't have in Oakville. Those kinds of costs, incremental beyond what we would normally spend for those electrons: You would have conveyed that to your political masters.

**Mr. David Lindsay:** Here's where we get into the problem of when I retired and was no longer on the file. I left long before any of those details came into play. In the normal course of trying to figure out the full cost, you would factor those kinds of things in. But I wasn't there. I had long gone.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** No, I understand that. But from the time Mississauga was cancelled, you were meeting

with Chris Morley and you were keeping him abreast of substantive costs that were being incurred.

**Mr. David Lindsay:** Yes, but we've flipped now from Oakville to Mississauga again, so yes, I did inform on, "Here's what we've discovered." The lead in the cabinet office on that file—I go back to my four corners—would be Giles Gherson. Giles would have been part of our four-corner discussions.

**Mr. Peter Tabuns:** Right. And you kept him informed, just as you kept all the other political masters in this matter?

**Mr. David Lindsay:** Yes.

**Mr. Peter Tabuns:** That's what I needed to know. Thank you so much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To Mr. Delaney, for 10 minutes.

**Mr. Bob Delaney:** Just to pick up where you left off with Mr. Tabuns, would you expect that in his report on Oakville, the auditor would consider additional savings negotiated by the OPA for a lower price for power; for example, from the \$17,277 per megawatt hour per month at Oakville to \$15,000 at the Lennox site?

**Mr. David Lindsay:** I would assume that would be part of anybody's business calculation, yes.

**Mr. Bob Delaney:** Numerous times, you've mentioned that there's a need for electrons in the southwest GTA. In that context, setting aside the scenarios that involve generating capacity, would a transmission solution also be feasible?

**Mr. David Lindsay:** Yes.

**Mr. Bob Delaney:** I just want to pick up on something that has been discussed at various times in the committee, and that has been the subject of project names or code names or whatever you want to call them. In your experience, is this a method that has been used to either categorize or protect projects with sensitive information down through the years?

**Mr. David Lindsay:** Yes.

**Mr. Bob Delaney:** Can you remember any project names that, for example, precede our government in 2003?

**Mr. David Lindsay:** I don't remember exactly what they were, but I was involved in a Hydro One transaction at SuperBuild, and I'm sure we had a code name for that. Can I remember specific ones? No.

**Mr. Bob Delaney:** Okay, but you can remember them being used routinely.

**Mr. David Lindsay:** It's a practice that didn't start yesterday.

**Mr. Bob Delaney:** Okay. So what would be the goal of assigning a project name or a code name to a specific endeavour or to a legislative bill or to an arbitration process, given the circumstances?

**Mr. David Lindsay:** In the public sector and in the private sector, you always want to be cautious that something doesn't get left on the photocopier. Confidential information falls into the wrong hands, left in a taxicab or a subway, so making sure that you're not too explicit, if it falls into the wrong hands, is a security practice so that information doesn't get out to the wrong people.

**Mr. Bob Delaney:** You could use words like “prudent” or “due diligence” to describe the process of assigning a name to a project.

**Mr. David Lindsay:** Yes.

**Mr. Bob Delaney:** Okay, that’s good.

You worked pretty closely with Minister Bentley and Minister Duguid. At any time, did you work closely with former Premier McGuinty?

**Mr. David Lindsay:** Not on this file, no.

**Mr. Bob Delaney:** Okay. Considering Ministers Bentley and Duguid, would you describe the two of them as people of integrity who did the best they could to serve Ontarians?

**Mr. David Lindsay:** Yes, I would. And I like them as people, too.

**Mr. Bob Delaney:** I’m sorry?

**Mr. David Lindsay:** And I like them as people, too.

**Mr. Bob Delaney:** Oh, thank you. They’re both going to be here and I’m sure we’ll pass that along.

**Mr. David Lindsay:** Give them my regards.

**Mr. Bob Delaney:** I shall do. One is a very good hockey player; the other is not such a good hockey player.

**Mr. David Lindsay:** He could probably outrun him, though.

**Mr. Bob Delaney:** I’m their goalie. I notice these things.

I just want to conclude with kind of an open-ended question. Throughout this process, we’ve been asking people questions that pertain to the projects, questions that pertain to the process as we cancelled two infrastructure projects—and, indeed, a government of any party would have cancelled both infrastructure projects. Can you talk to us a little bit about what could be done to improve the decision-making in energy infrastructure?

**Mr. David Lindsay:** That’s an excellent question. I’m not sure that in the time we have we can resolve it, but I think people of goodwill want to do the right thing, and then every individual transaction has interests. Generically, everybody in the private sector says that we should not politicize the electricity system, but as soon as something doesn’t go their way, they come in and lobby the politicians. I think that no matter what the process is, we’re an open, democratic system, and transactional negotiations require confidentiality and a process, and the two processes don’t always match up. So I think we should constantly be trying to improve the way we do things, but simply to say we should not politicize the electricity system is, in my personal opinion, if you could permit me this, an oversimplification, because I’ve seen private sector people come in and use political connections, political conversations, when things didn’t go their way. When things go their way, they say, “Don’t interfere with the politics.” When things don’t go their way, they go political.

So I think that no matter what the system is, we have to recognize that we live in a democratic system. The electricity system plugs into every person’s home, and

we’ve got to respect fiscal responsibility, the integrity of the system, the mechanics of getting the electrons into homes and the environmental costs of what we do with generating that electricity. It’s a complicated process that I’m not going to be able to answer in a couple of minutes with you, but I think we should be constantly trying to improve it, yes.

**Mr. Bob Delaney:** I thought you had solved all of the world’s problems just before we started when we were kibitzing back and forth.

**Mr. David Lindsay:** Yes, Murray and I needed two more minutes.

**Mr. Bob Delaney:** If you had those two more minutes, would there be anything on the consultation process that you might be able to extemporize as a suggestion?

**Mr. David Lindsay:** I thought you might ask me about that. I think consultation and having people aware with full information is very important, but I’ve seen different processes, depending on the source of the electrons, being used by the same government. So my question back to you would be, if you want to have a new process for acquiring electricity into the system, would you be asking that question about all sources of electricity or just gas plants?

**Mr. Bob Delaney:** Okay. Mr. Lindsay, I think I’m going to wind it up there. In the event that our government ever asks me to sit in a corner office of any ministry, I do hope that I get someone like you. You’re the kind of person who gives the public service a good name. Thank you very much for having come in.

**Mr. David Lindsay:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Lindsay. You’re officially dismissed.

We’ll entertain the two motions presented by Mr. Tabuns. I invite you to read them into the record.

**Mr. Peter Tabuns:** I move that the Ministry of Energy and Cabinet Office produce any and all briefing notes, including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant.

**The Chair (Mr. Shafiq Qaadri):** Any discussion on this before we vote? Those in favour? Those opposed? Motion carried.

Next motion.

**Mr. Peter Tabuns:** I move that the minister’s office (energy) and Premier’s office produce all briefing notes, including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant, and that a search be extended to Archives Ontario in the event documents were archived following staff departures.

**The Chair (Mr. Shafiq Qaadri):** Following discussion? Yes? Seeing none, those in favour? Those opposed? Motion carried.

If there’s no further business, committee is adjourned until Tuesday next week.

*The committee adjourned at 1002.*









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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 23 April 2013

# Journal des débats (Hansard)

Mardi 23 avril 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 23 April 2013

Mardi 23 avril 2013

*The committee met at 0830 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting of the justice policy committee to order. The first order of business is the subcommittee report. Mr. Fedeli.

**Mr. Victor Fedeli:** Standing Committee on Justice Policy, report of the subcommittee: Your subcommittee on committee business met on Monday, April 22, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Clerk of the Committee schedules an extra witness at the end of the committee hearings from the government's selection in the rotation.

(2) That the confirmation for the appearance of a witness shall be no less than 24 hours prior to a committee meeting.

(3) That the committee shall submit an interim report in both official languages to the House by May 21, 2013, pursuant to the order of the House dated February 20, 2013.

(4) That the interim report shall be a summary of testimony of witnesses up to May 2, 2013.

(5) That the interim report will be broken down by witnesses, as follows:

—a summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants; and

—a summary of testimony respecting the Speaker's finding of a prima facie case of privilege.

(6) That the committee will meet outside of its regular meeting schedule for purposes of report writing.

(7) That the Clerk of the Committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Are there any discussion points before we move to adopt the subcommittee report as read? Seeing none, all in favour? All opposed? The subcommittee report is adopted.

## MEMBERS' PRIVILEGES

## MR. SEAN MULLIN

**The Chair (Mr. Shafiq Qaadri):** I'd now invite our first witness to please come forward, Mr. Sean Mullin, who will be affirmed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Sean Mullin:** I affirm.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Mullin. As you know, you have five minutes for your introductory address, and then a rotation of questions afterward. Please begin.

**Mr. Sean Mullin:** Thank you, Chair. My name is Sean Mullin. I joined the Office of the Premier as a policy adviser in November 2007. I left the government in October 2011, immediately after the conclusion of the provincial election.

From 2007 to 2009, I was responsible for finance and economic policy, which include working on projects such as the annual budget process. In November 2009, I became the deputy director of policy. Among other things, it added responsibility for energy policy to my portfolio.

In my capacity as energy policy adviser, I regularly met with outside stakeholders, including representatives from private companies, and I routinely interacted with staff from the Ministry of Energy, the minister's office and from various energy agencies, including the Ontario Power Authority.

In terms of my involvement with the matter before this committee, I participated in a series of meetings with TransCanada in the summer of 2010, along with my colleague Jamison Steeve. These meetings were conducted without prejudice, were exploratory in nature and occurred at TransCanada's request.

In October 2010, I participated in two meetings with TransCanada where Jamison communicated that, first, the government would not be proceeding with the Oakville gas plant, and second, that the government would prefer that TransCanada and the OPA enter into negotiations to mutually resolve the matter.

After the October 7 public announcement, from time to time in my capacity as energy policy adviser, I would receive high-level updates on the status of negotiations between the OPA and/or the ministry.



In April 2011, I participated in two meetings with representatives from TransCanada. The first was at their request and involved the minister's office, the deputy minister and legal counsel. We listened and made no commitments. The second was with TransCanada's director of government relations, along with my colleague Craig MacLennan. Prior to that meeting we consulted legal staff and received advice on how to conduct the meeting. The meeting occurred without prejudice, and after hearing from TransCanada we again made no commitments. After the meeting, we debriefed legal staff and ministry officials. At no point in this process did I direct the OPA to take a particular course of action as part of its negotiations, nor did I engage in any negotiations with TransCanada directly.

Later in April 2011, I was informed by Jamison that we'd been screened off the file because TransCanada had threatened litigation and there was a possibility we would be called to provide evidence or serve as witnesses. I subsequently met with lawyers from the Ministry of the Attorney General, answered any questions they had and provided them with any documents I had in my possession. This ended my involvement in the file.

My involvement with the Mississauga plant was very limited. I was aware that a campaign promise had been made during the campaign, but as I left the government immediately after the election, I was not involved in the implementation of that campaign commitment in any way.

Thank you, and I look forward to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Mullin. To the NDP. Mr. Tabuns, you have the opening 20 minutes.

**Mr. Peter Tabuns:** I hope I have more than two minutes, Mr. Qaadri.

**The Chair (Mr. Shafiq Qaadri):** Twenty.

**Mr. Peter Tabuns:** Mr. Mullin, thank you for being here this morning. Why did you and Jamison Steeve meet with TransCanada in June of 2010?

**Mr. Sean Mullin:** A couple of things. First of all, in my capacity as energy policy adviser, and as I believe Jamison mentioned in his testimony as principal secretary, it was routine for us to meet with stakeholders across numerous industries and fields, including the energy industry. Secondly, I believe Jamison had spoken to the Premier before that meeting and gotten his okay to meet with TransCanada. And third, I would point out that it was at TransCanada's request. We were simply meeting with them to listen to them and hear what they had to say.

**Mr. Peter Tabuns:** Now, you'd met with them a number of times previous to this meeting, along with Jamison Steeve. Correct?

**Mr. Sean Mullin:** Previous to that meeting? The first time I met with TransCanada was when I took over the energy file. Through December and January of 2010, I met with stakeholders across the energy sector, and that was a meet-and-greet where I met with representatives from TransCanada.

**Mr. Peter Tabuns:** Well, in your testimony—in your notes talking with counsel John Kelly and Darrell

Kloeze, you note you first met with Pourbaix and Breen around Christmas of 2009. They said the local mayor was offside; their plans to invest in the local community fell apart quickly.

**Mr. Sean Mullin:** That's what I meant—so December or January 2010; that was the period where I was literally—I didn't know what to expect. They had requested a meeting. I was literally meeting everybody in the energy sector. I don't think the level of—it wasn't an issue that was really on my radar at that point, so it was—

**Mr. Peter Tabuns:** Was it on your radar after that meeting where they said this was falling apart?

**Mr. Sean Mullin:** I don't think they characterized it like that. It was mainly more about what TransCanada was about. I believe they said—you know, they indicated that they were having problems. It really escalated over the spring of 2010, and the June meeting was where it was clear that that was a meeting where they wanted to come in and talk about what the government could do in the circumstance.

**Mr. Peter Tabuns:** So you went into this meeting with them and Jamison Steeve knowing that this plant was in trouble, knowing that they'd been interested in you passing legislation to clear out the municipal barriers. It wasn't just a "How are you doing today?" meeting. You knew they had problems when they came in to see you.

**Mr. Sean Mullin:** In June 2010, absolutely, yeah.

**Mr. Peter Tabuns:** So why wasn't the Ministry of Energy included in these sessions?

**Mr. Sean Mullin:** I'm not sure who the Ministry of Energy was meeting with at that time, but they had requested to meet with Jamison. I was the energy policy adviser. Jamison asked me to participate in the meeting.

**Mr. Peter Tabuns:** Why wasn't the OPA included in these discussions, given they had the contract with TransCanada?

**Mr. Sean Mullin:** They asked to meet with Jamison, first of all. Secondly, I think some of the solutions that they were talking about, a legislative solution, would be beyond the scope of the OPA.

**Mr. Peter Tabuns:** In fact, from your earlier testimony to counsel, by June it was too late in terms of that session; you'd already passed that window. Correct?

**Mr. Sean Mullin:** A legislative session I guess in June would be too late. It doesn't mean it couldn't happen in the fall.

**Mr. Peter Tabuns:** Your earlier testimony seems to indicate that they knew that option was over. They weren't talking about the fall.

**Mr. Sean Mullin:** It was during the summer. The government was still—it was still a possibility. Whether the government was ever going to actually do a legislative option, I think that's for the decision-makers to figure out.

0840

**Mr. Peter Tabuns:** Your comment to counsel was, "Once we got through the legislative session, I think they realized the window of us passing legislation was over."

**Mr. Sean Mullin:** First of all, I'm at a bit of a disadvantage. I don't see what you're referring to. I don't—

**Mr. Peter Tabuns:** I have your notes of your interview with senior legal staff about what happened.

**Mr. Sean Mullin:** Right. I'm not saying I didn't say that. I'm just saying it's difficult for me to refer to that. In retrospect, a year later, I'm not sure what I was saying in terms of—I think you're going to have to point me to what you're referring to. I'm sorry.

**Mr. Peter Tabuns:** Well, I don't have a second copy of these, but I'm looking at the difference between what you're telling us now and what you've told counsel in the past.

Did you at this point let the Ministry of Energy or OPA know that TransCanada was going around them?

**Mr. Sean Mullin:** TransCanada was going around—sorry?

**Mr. Peter Tabuns:** Around the OPA and the Ministry of Energy.

**Mr. Sean Mullin:** I believe the Ministry of Energy knew, or the minister's office knew, that we were meeting with TransCanada. I wouldn't characterize that as going around. What we were doing was responding to a request for a stakeholder meeting.

**Mr. Peter Tabuns:** When TransCanada requested this meeting, did they deliver the request through you or through Jamison Steeve or someone else in the Premier's office?

**Mr. Sean Mullin:** I don't actually recall how that was set up. I know the request was to meet with Jamison.

**Mr. Peter Tabuns:** I understand that you took notes at a number of these meetings.

**Mr. Sean Mullin:** I believe so, yes.

**Mr. Peter Tabuns:** Are these notes in your possession?

**Mr. Sean Mullin:** No, I did not take any notes when I left. In fact, when I debriefed with counsel, anything related to the Oakville file I left with counsel at that time.

**Mr. Peter Tabuns:** Chair, at the end of rotations I'm going to be putting a motion to request the production of those notes for this committee.

Jamison Steeve in his notes indicated there were three points you and he were instructed to convey: (1) that the government would be issuing a minister's directive to the OPA that the government would not be proceeding with the gas plants in Oakville—this was in October; (2) a request that TransCanada consider not proceeding with litigation at that time so that (3) TransCanada and the OPA could enter into productive negotiations.

Who gave you those instructions?

**Mr. Sean Mullin:** I was made aware of those instructions from Jamison.

**Mr. Peter Tabuns:** So they were never given directly to you?

**Mr. Sean Mullin:** Jamison told me, and he was my boss, so I had no reason to doubt him.

**Mr. Peter Tabuns:** Okay. Do you know who gave him those instructions?

**Mr. Sean Mullin:** I know that Jamison had talked to the Premier. He testified to such an extent. I have no reason to believe that that didn't happen.

**Mr. Peter Tabuns:** When the meetings were taking place with TransCanada, did you have any indication how much it would cost to ensure that the plant in Oakville didn't proceed?

**Mr. Sean Mullin:** What I knew during that period was that there was a lot of uncertainty about the different options. What we didn't know was, if we were to have the OPA undertake negotiations to try and move the contract from Oakville to serve the needs of the Kitchener-Waterloo-Cambridge area, which is what I believe was under consideration, what the costs would be under that scenario.

**Mr. Peter Tabuns:** So your thinking was that you would just simply switch plants around.

**Mr. Sean Mullin:** The sunk costs were \$40 million, in that range. We knew that those would be a cost, but other than that, until the negotiations occurred and both sides were able to reach an agreement, we didn't know what the outcomes would be in that scenario.

**Mr. Peter Tabuns:** And when was the decision made to cancel the Oakville gas plant?

**Mr. Sean Mullin:** I believe it wasn't very long before the announcement. I believe it was the end of September, early October—probably the end of September.

**Mr. Peter Tabuns:** Sorry, say that again: by the end of September?

**Mr. Sean Mullin:** Yes. I don't know the exact date, but when Jamison told me that the decision had been made, there wasn't a lot of gap between meeting with TransCanada and then subsequently announcing it.

**Mr. Peter Tabuns:** Who made that decision?

**Mr. Sean Mullin:** I believe it was the Premier and the minister.

**Mr. Peter Tabuns:** When we look at the information that was given to us, notes of meetings between TransCanada and the minister—and people have heard this before; apparently, the minister said, "We're continuing to look at this," in his conversation with TransCanada, and, "We'll have word for you later this year."

The TransCanada representatives got very angry and said, "We already have a deal with the Premier's office." It doesn't appear that the minister was aware that anything was going on here.

**Mr. Sean Mullin:** I can't speak for the minister in that meeting. It's probably best to ask him later this afternoon.

**Mr. Peter Tabuns:** Were you present at that meeting?

**Mr. Sean Mullin:** No, I was not.

**Mr. Peter Tabuns:** Were you involved with the development of the long-term energy plan?

**Mr. Sean Mullin:** Yes, sir, I was.

**Mr. Peter Tabuns:** The government has been saying the long-term energy plan showed that it was no longer necessary to have a plant at this site, but that the demand for electricity in Ontario would require that kind of



power produced in the future. Who provided the base demand projections that you utilized?

**Mr. Sean Mullin:** Any type of demand forecasts were coming up through the ministry. Whether they were produced by the OPA or the IESO, I'm not sure. I think both of them would produce different demand forecasts.

**Mr. Peter Tabuns:** So did you actually see those documents?

**Mr. Sean Mullin:** It's quite possible I did. We were in briefings every day for months. I know that it was communicated to me by ministry officials and the OPA that the plant was no longer needed to meet the reliability demands in 2014.

**Mr. Peter Tabuns:** And do you have a sense of when you knew this?

**Mr. Sean Mullin:** It was sometime during the summer. The way I recall it is, up until sometime in early summer the issue was that the plant was needed for reliability concerns in the southwest GTA by 2014. That was the key thing, because while a transmission solution could have been a solution 10 years ago, by the summer of 2010 you could simply not build a transmission solution within a four- or five-year period. So 2014—the only solution to meet 2014 was a gas plant. Then what was changed was not that the gas plant couldn't be used or that a gas plant on that spot couldn't serve some of the needs of the system, but that it was no longer needed to be in place by 2014 in order to ensure the lights didn't go out in the Oakville area.

Now the option of going back to a transmission solution, which would take a longer timeline and potentially be as far out as 2019, could now be considered. That was what changed the circumstance, because now it wasn't an issue of local opposition versus, literally, the lights going out; it was local opposition versus the power could be used, but it doesn't necessarily have to be there anymore.

**Mr. Peter Tabuns:** Interestingly, as we go through the documents, on September 13, 2010, the OPA was briefing the Deputy Minister of Energy that the plant was still needed.

**Mr. Sean Mullin:** I can't speak to that exact document, but I would know that the OPA, while developing the long-term energy plan, until a decision was made would obviously incorporate that plant as part of its plans. It's not to say that that power couldn't be used—they wouldn't deviate from their planning until the decision was made by the government to cancel that plant.

**Mr. Peter Tabuns:** Jamison Steeve had some handwritten notes. I'm just going to ask the Clerk: Do we have those available?

*Interjection.*

**Mr. Peter Tabuns:** One is October 7—

*Interjection.*

**Mr. Peter Tabuns:** If you go to the fifth page—

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**Mr. Sean Mullin:** Okay.

**Mr. Peter Tabuns:** It's handwritten. These are Jamison Steeve's notes.

**Mr. Sean Mullin:** One, two, three, four, five—five from the front, or—?

**Mr. Peter Tabuns:** Five from the front.

**Mr. Sean Mullin:** Okay.

**Mr. Peter Tabuns:** You have a page of handwritten notes there?

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** The bottom paragraph—that's under "JS" and "SM," and I'm going to assume that that's Jamison Steeve and Sean Mullin. These are notes of meetings that you had with Alex Pourbaix at TransCanada: "Gov't will return to [TransCanada] before [long-term energy plan] is finalized with potential options for other gas plants." Why are you telling a private company what your gas plants are and sort of letting them choose amongst gas plants at this point?

**Mr. Sean Mullin:** I'm not exactly sure what this refers to. It could have been that the long-term energy plan was still coming together at that point.

**Mr. Peter Tabuns:** Yes, it hadn't been completed. It was being written. It was a plan that we didn't get any documents for in our document disclosure request, but one of the biggest power producers in Ontario is getting a sneak peek of what's actually going to be the plan in Ontario.

**Mr. Sean Mullin:** I don't think—

**Mr. Peter Tabuns:** Why?

**Mr. Sean Mullin:** If I recall, the only—first of all, this doesn't say that any particular plants were discussed here. Secondly, it was the intention of that meeting to say that we would like the OPA and TransCanada to come together after the announcement, to try and negotiate a solution.

One of those solutions would have been, potentially, a Kitchener-Cambridge-Waterloo plant. I don't believe that that long-term energy plan was the first time that plant was designated as a need. It was already out there in the public. The long-term energy plan was confirming that that plant was still needed, and if the government, through the OPA, had decided that that was an opportunity to move the contract over, then it was in the interests of ratepayers to have the OPA engage in those negotiations.

**Mr. Peter Tabuns:** Well, I'll just note—this is the paragraph above: "LTEP"—the long-term energy plan—"expected to be finalized by mid-November; will speak to gas supply needs in Nanticoke, KW, Sarnia-Lambton.

"Gov't will return to TC before [long-term energy plan] is finalized with potential options for other gas plants."

Why was a private company drawn into that planning? Why were they dealing with a document that wasn't public?

**Mr. Sean Mullin:** I don't think they were given any document in this meeting. There certainly weren't any documents—

**Mr. Peter Tabuns:** No, you're just saying you'll return to them with the long-term energy plan before it's finalized.

**Mr. Sean Mullin:** I don't think it says that they're getting a copy of the long-term energy plan. The inten-



tion was that the OPA would start to enter negotiations with them, and the one that seemed the most obvious candidate was Kitchener-Waterloo-Cambridge. The OPA already had a contract with TransCanada. The decision had come down to no longer proceed with the plant in that location, and the issue was, could it be a better deal for ratepayers to try and transfer that contract over instead of paying out a liability for no electrons whatsoever? No one could really give a completely accurate estimate of what that would be, and the only way to discover whether that was possible was to actually enter into those negotiations.

**Mr. Peter Tabuns:** Did you in any way shape the long-term energy plan so that you could provide TransCanada with another option?

**Mr. Sean Mullin:** No. This Kitchener-Waterloo-Cambridge plant, as I said, I believe was identified previous to the long-term energy plan. It literally reaffirmed that need, and I believe because it was there, it was the candidate that seemed appropriate.

**Mr. Peter Tabuns:** Is the second document circulated, Tamara?

*Interjections.*

**The Chair (Mr. Shafiq Qadri):** Just as we're doing that, I would just advise that if any documents need to be passed to the witnesses, it must come through the Clerk. Staff, nor indeed anyone, are not allowed, or not invited to, please, present things directly to the witnesses.

You have less than a minute, Mr. Tabuns.

**Mr. Peter Tabuns:** Well, I may not get everything out of this question in a minute, Chair.

But if you go to the third page of the document before you, which is from John Kelly: "Memo: TransCanada Energy and Ontario Power Authority file."

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** It's the fourth page—sorry, no, the third page. And it's the first paragraph. It's again this meeting with Duguid, Craig MacLennan and Dave Lindsay with TCE. It's clear that the minister and apparently—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns.

Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Okay. Thank you very much.

Sean, could you tell the committee a little more about your role as deputy director of policy to the Premier of Ontario?

**Mr. Sean Mullin:** Sure, I'd be happy to. As you know, the policy department of the Premier's office is one of the divisions within the Premier's office that helps provide advice to the Premier and cabinet on policy decisions that are facing the government. Some of the responsibilities, as I mentioned in my opening statement, involve meeting with ministries, meeting with ministers' offices, meeting with government agencies, meeting with outside stakeholders, be they industry associations or private companies, and then synthesizing that information and trying to be helpful in any way to decision-makers.

**Mr. Bob Delaney:** Earlier you said that, to use your words, "it was routine" to meet with stakeholders and probably communities. Do you want to expand on that just a little?

**Mr. Sean Mullin:** I would say 30% or 40% of my day, on average, was meeting with stakeholders. I had a number of different responsibilities, and there's a lot of people who have an interest in what goes on and what the province does and what the government of Ontario does. So it would be very routine for me to take a meeting—particularly when I was first getting up to speed on a file, taking over the energy file, for example—to meet with as many people as I can across the sector.

So I would listen. Many times, stakeholders would ask for policy changes, legislative changes. That doesn't mean that the government was able or even willing to satisfy the vast majority of those, but we're there to consider and pass on those types of information.

**Mr. Bob Delaney:** Well, as an elected member you have just one body, but often you have a number of different minds. So in that sense, it was normal for political staff to engage with stakeholders?

**Mr. Sean Mullin:** Absolutely. I would say it's a core part of our job.

**Mr. Bob Delaney:** Okay. In the course of your discussions, you would obviously have been aware that there was local opposition to both the Mississauga and Oakville power plants.

**Mr. Sean Mullin:** Absolutely, through the media but also through the tireless advocacy of the local member, Kevin Flynn.

**Mr. Bob Delaney:** Yes. Well, these were major issues at the time. So given that, it would make sense that former Premier McGuinty would keep himself informed through the proactive outreach of people such as you?

**Mr. Sean Mullin:** I think that's fair, yes.

**Mr. Bob Delaney:** Okay. The committee has already heard that you were involved in meetings with the proponents of the Oakville power plant. Is there any other clarification that we need on the scope and the depth of your involvement?

**Mr. Sean Mullin:** With respect to Oakville?

**Mr. Bob Delaney:** With respect to Oakville.

**Mr. Sean Mullin:** Not that I'm aware of.

**Mr. Bob Delaney:** Okay.

**Mr. Sean Mullin:** I mentioned in my opening statement that I was screened off the file in April 2011.

**Mr. Bob Delaney:** Yes, I know. I just want to make sure that we've covered all of the grounds. Again, just to cover it, you didn't negotiate directly with TransCanada Energy?

**Mr. Sean Mullin:** No. We were not authorized to, we had no intention to, and we did not engage in anything of that matter.

**Mr. Bob Delaney:** And you didn't make any specific offers to the proponent?

**Mr. Sean Mullin:** No, absolutely not.

**Mr. Bob Delaney:** There's been some discussion in some of the committee's deliberations around Trans-



Canada's demand to—and I'm going to use the expression—"be kept whole." What did you understand that that meant?

0900

**Mr. Sean Mullin:** I'm not quite surely exactly what that meant. I can say for certain that in the meetings that I participated in, we were very clear. Jamison was very careful to open up any meeting by saying, "This is occurring without prejudice. We are not here to, nor are we authorized to, enter into any negotiations," and in those two October meetings it was simply about delivering a message. So I can't speculate on why TransCanada, after the fact, were making those claims.

**Mr. Bob Delaney:** Was it more appropriate to engage in negotiations with TCE, from your vantage point, or would it have been more appropriate to have abrogated the deal, ripped up the contract, whatever colloquialism you like?

**Mr. Sean Mullin:** I think what was underlying the decision at the time was that it would be best to try and get the Ontario Power Authority—they were the experts in terms of being able to value the contract and have the commercial expertise—to try and engage in negotiations to see if transferring the contract to a different location and a different plant would be a better outcome. I think there was a range of estimates in terms of simply cancelling the plants and the potential litigation that would be involved, and if there was money paid out under that scenario, that would be money paid out with no electrons, whereas it was clear that there was a need at the time for a plant in the Kitchener–Waterloo area, and if the government, through the OPA, could satisfy that need by transferring the contract, it would be a way of minimizing costs but also serving another need within the system.

**Mr. Bob Delaney:** Okay. So I'm gathering that the consensus around you was that the better deal for Ontarians was to try to engage in negotiations regarding an alternative site, to let there be some benefit from the power produced there, as opposed to tearing up an agreement and paying out full damages with no supply being produced. Is that an encapsulation that's correct?

**Mr. Sean Mullin:** I believe that was the direction that I got from Jamison, and that's why it led to him indicating to TransCanada that the government would prefer, if they were interested, to try and enter into negotiations with the Ontario Power Authority.

**Mr. Bob Delaney:** So the thinking was that we should make our best efforts to avoid litigation with TransCanada Energy?

**Mr. Sean Mullin:** Yeah. Until those negotiations occurred, you would not know what was possible, right? If, under litigation, it was found against the province, then whatever damages would be paid would be paid for nothing, right? Whereas if through negotiations you were able to procure a plant elsewhere that was needed—you know, without undertaking that process with the experts at the Ontario Power Authority, you wouldn't know what was possible, and that, I believe, is why that course of action was pursued.

**Mr. Bob Delaney:** Okay. Just to get your take on the process of screening you out of meetings with the proponents, former secretary Shelly Jamieson was here, and I'm just going to read a few words that she told the committee:

"This decision was made because their earlier involvement with the proponents made them potential witnesses in threatened litigation resulting from the decision to cancel that particular contract. I felt this step was appropriate to protect their interests but, more importantly, those of the public service, should the matter result in litigation."

Does that encapsulate your understanding of why you were screened out?

**Mr. Sean Mullin:** Yeah, I believe so. So I heard from Jamison, who had said that the secretary had spoken to him, and I'm not a lawyer, but the way it was explained to me was that this was a fairly common practice when you could potentially be called to give evidence or be a witness. And so, when I was told that, I obviously complied and met with lawyers and debriefed.

**Mr. Bob Delaney:** Let's talk a little bit about the Oakville relocation for a couple of questions. One of the reasons cited was that through the process of putting together the long-term energy plan, it became clear that, due to changes in demand and supply, the plant was no longer needed. Now, you talked about that a little bit earlier. Did you want to expand on that a little bit?

**Mr. Sean Mullin:** Just to kind of reiterate what I saying, I think the key thing was—and I'm not sure if this committee has heard this specific level of detail, but this is what I remember from the conversation—it was no longer needed by 2014, and that was the date that made a gas plant necessary. Once we found out that the lights would stay on after 2014 without a gas plant in Oakville, then suddenly a transmission solution was now possible again. A transmission solution was possible in 1999, but it was not possible in the first half of 2010. Once the demand forecasts had changed, it was now possible to get by. So now the issue facing the government was not, "Keep the lights on or cancel or move a plant"; it was, "Yes, this plant could be useful, but it's not necessarily needed in this exact location versus the public opposition to it." That was, I think, a very different decision.

**Mr. Bob Delaney:** Okay. Actually, that's very helpful.

You talked a little bit about some of the local opposition to that plant, and again I'm talking about Oakville. We know Oakville passed some municipal bylaws, and we've heard some allegations that these municipal bylaws should have been enough on their own to stop the plant from being constructed. Any thoughts on that?

**Mr. Sean Mullin:** Well, what I remember from that issue was that there was a tremendous amount of uncertainty. So I think nobody could actually tell us—again, I'm not a lawyer, but in those conversations that summer no one could say with certainty that TransCanada would not be able to challenge this bylaw, would not be able to have the PM 2.5 bylaw overturned, would



not be able to have—the interim control bylaw I believe was an interim measure, but other things—so what that left was a lot of uncertainty about that course of action. If the government had simply said, “Well, I’m going to let this play out,” you could have the scenario where, two years later, TransCanada has those bylaws overturned and now some costs have risen, progress is made on the project, and then the government’s faced with, should they cancel a plant where costs have increased? So, I think that scenario had considerable risk as well.

**Mr. Bob Delaney:** And where you talk about the bylaws being overturned, we’re referring to an appeal to the Ontario Municipal Board?

**Mr. Sean Mullin:** It could have been. I’m not sure of the actual legal process for that and the PM 2.5, but I remember there being uncertainty from the perspective.

**Mr. Bob Delaney:** Right. And again for clarity, an act by the province had the ability to, in essence, legislate over Oakville’s bylaws?

**Mr. Sean Mullin:** That was one of the options that was presented to the government, but that would have involved—the government would have had to make the decision to do that as well.

**Mr. Bob Delaney:** Right. So in essence—I just want to try to encapsulate this again. We knew the power wasn’t needed by 2014. That was formerly but no longer the case for locating a gas plant in that area. Oakville had zoned the area industrial. There was a risk of litigation should Oakville, in essence, challenge its own zoning and the Ontario Municipal Board rule in favour of TransCanada Energy. And the challenge before the province was to find a negotiated solution before construction on the plant began and costs escalated. Is that accurate?

**Mr. Sean Mullin:** I think that encapsulates the issue.

**Mr. Bob Delaney:** Okay. Talking a little bit about Mississauga, in that case the Ontario Municipal Board did overturn the municipality’s appeal, and subsequently Mississauga issued a building permit for the construction of the plant. So that could very well have happened in Oakville had the province failed to intervene, and again, especially because this site was also zoned industrial. I’m just checking to make sure that this is clear. Is that your recollection?

**Mr. Sean Mullin:** With respect to Mississauga, I have very little familiarity and I don’t really know the—I’m not an expert on the Ontario Municipal Board, but what I did know was that there was no—speaking with the ministry, there was no one who was saying with absolute certainty, “There’s no way these things could potentially not be overturned”—if I got that out right.

0910

**Mr. Bob Delaney:** Earlier you said that rather than run the risks of quite substantially higher costs, subject to the outcome of litigation, your feeling and your advice was that we should try to negotiate a solution at the time, before costs escalated out of control, and you were advising that that was the responsible way of going forward.

**Mr. Sean Mullin:** I think that emerged as a consensus in terms of it certainly was worth an effort for the gov-

ernment to try and pursue that avenue. If through negotiations a deal wasn’t reached, you could always fall back to litigation.

**Mr. Bob Delaney:** In the case, again, of Oakville, as the proverbial shovel hadn’t gone into the ground, it’s reasonable to say that the sunk costs of relocating the Oakville power plant would have been much higher had the province waited or run the risk of litigation.

**Mr. Sean Mullin:** I believe that to be true. I don’t know at what rate they were accumulating, but I know that TransCanada was expending money. Even though they weren’t building, they were spending money on legal fees and whatever the case may be—planning costs, whatever.

**Mr. Bob Delaney:** Yes. Earlier, you spoke about a transmission solution, and in her testimony before the committee, JoAnne Butler from the Ontario Power Authority confirmed that transmission upgrades were needed in the southwest GTA, with or without a power plant in the region. You’ve got some experience on the file and you’re familiar with the development of the long-term energy plan. Would you agree with JoAnne Butler’s assessment and can you comment on it?

**Mr. Sean Mullin:** That’s how I remember it. I remember the issue was not whether transmission was going to be needed; it was how soon, I believe. The decision did have to move them up a couple of years, but it’s not a matter of never needing transmission. That was going to be needed there.

**Mr. Bob Delaney:** Right. So with or without the plants, we were going to spend money as a province upgrading the transmission infrastructure, no matter what?

**Mr. Sean Mullin:** That’s my recollection, yes.

**Mr. Bob Delaney:** Okay. A few questions then about Mississauga. I understand the limitations of your exposure on the file. In his report, the Auditor General talked about significant risks had the government ripped up the original agreement as opposed to negotiating a new deal. Based on your knowledge of the file—we’re going to come back to the same discussion we had in Oakville—cancelling the contract outright would have opened the province up to lawsuits, significant litigation costs and penalties. Do you want to just comment on that?

**Mr. Sean Mullin:** It’s really hard for me to comment on Mississauga. I wasn’t involved in any substantive conversations around a decision, or even any preparation. So, really, my knowledge of Mississauga is through the media over the last couple of months.

**Mr. Bob Delaney:** Okay, that’s fair enough. Let’s talk about it from just a slightly different angle, then. Had the province and the OPA abrogated the deal, ripped up the contract—whatever metaphor you choose—do you feel there would have been increased risks in terms of future negotiations of contracts with other suppliers?

**Mr. Sean Mullin:** Sorry, Mississauga or Oakville?

**Mr. Bob Delaney:** At this point I’m talking about Mississauga, but it can apply to Oakville. If either the government or the OPA, or both, had chosen to abrogate



either deal, in your opinion would we then, in future negotiations on other contracts with other suppliers, have faced a larger risk?

**Mr. Sean Mullin:** Again, it's difficult for me to speculate. I'm not an expert on contracts. I know the business community does look to the government to be treated fairly in general. I wouldn't necessarily disagree with what you're saying; I'm just saying I'm not an expert in that type of conversation.

**Mr. Bob Delaney:** Chair, how am I doing on time here?

**The Chair (Mr. Shafiq Qaadri):** A minute and a half.

**Mr. Bob Delaney:** A minute and a half? The next series of questions I have to ask you—there are a number of questions I need to string together, so I'm going to stop here and we'll pick it up in the next 10-minute round. Thank you very much, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the Conservative side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. Welcome. I know that we take you away from time in your normal life. What is it that you do today?

**Mr. Sean Mullin:** What do I do? I work with a number of small start-up technology companies.

**Mr. Victor Fedeli:** Thank you. There are notes here that the chronology of all of these events began on June 3, 2010.

**Mr. Sean Mullin:** What are you referring to?

**Mr. Victor Fedeli:** The John Kelly—

**Mr. Sean Mullin:** Okay. Yes.

**Mr. Victor Fedeli:** There are notes that this began on June 3, 2010, with a meeting between Chris Breen, yourself and Jamison Steeve. On page 2, it says, "They were told"—"they" being TransCanada—"that five politicians would make the decision." Do you see that in the second sentence on page 2? Can you name the five politicians?

**Mr. Sean Mullin:** I don't know exactly what that refers to. I know that the people who made the decision were the Premier and the minister.

**Mr. Victor Fedeli:** It says, "He met with Jamison Steeve ... and Sean Mullin.... They talked about the ... property.... They were told that five politicians would make the decision. There would be no civil servants involved." You were in the meeting?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** Who were the five politicians who were named?

**Mr. Sean Mullin:** Again, there were no politicians named in that meeting.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Sean Mullin:** There were no politicians named in that meeting.

**Mr. Victor Fedeli:** Why would it say here, "They were told that five politicians would make the decision"?

**Mr. Sean Mullin:** I can't speculate why that's here. It could have been a euphemism. It could have been a transcription error—

**Mr. Victor Fedeli:** "Five politicians would make the decision" is a euphemism?

**Mr. Sean Mullin:** I mean "five" being a general number that is not specific.

**Mr. Victor Fedeli:** Okay, so they weren't specific. Which politicians were named to make the decision, then?

**Mr. Sean Mullin:** The politicians who made the decision were Premier McGuinty and the Minister of Energy at the time.

**Mr. Victor Fedeli:** And who was the Minister of Energy at the time?

**Mr. Sean Mullin:** Brad Duguid.

**Mr. Victor Fedeli:** Okay. Who advised them along the way if they made that decision?

**Mr. Sean Mullin:** Who advised?

**Mr. Victor Fedeli:** The Premier and Brad Duguid.

**Mr. Sean Mullin:** I assume Minister Duguid's staff advised him, and Jamison would have been the one having the conversations with the Premier.

**Mr. Victor Fedeli:** At this meeting with TransCanada, would costs have been discussed?

**Mr. Sean Mullin:** In July—

**Mr. Victor Fedeli:** This will be the June 3 meeting.

**Mr. Sean Mullin:** We never discussed—

**Mr. Victor Fedeli:** The scope of costs; was the scope of costs discussed?

**Mr. Sean Mullin:** TransCanada would come in and talk about their challenges and their problems, but it wasn't a negotiation back and forth.

**Mr. Victor Fedeli:** I understand. But would there have been a scope of dollars discussed?

**Mr. Sean Mullin:** I believe they may have talked about different options, but none of these options were ones that—

**Mr. Victor Fedeli:** I understand that. I'm talking about, would money have been discussed—not in terms of, "This is how much we require." Would dollars have been debated or discussed at all?

**Mr. Sean Mullin:** There was nothing being debated. No.

**Mr. Victor Fedeli:** So would any numbers have been suggested?

**Mr. Sean Mullin:** You know what? To be honest with you, TransCanada could have been referring to the work they were undertaking so far—

**Mr. Victor Fedeli:** And how much would that have been? What kind of numbers were thrown out?

**Mr. Sean Mullin:** I don't remember any numbers from that.

**Mr. Victor Fedeli:** You don't remember. So in your solicitor-client-privileged meeting with Sean Mullin, Dennis Brown, John Kelly and Darren Kloeze, it says here that you said "up to one billion dollars from TransCanada's viewpoint" was discussed. Now do you remember that?

**Mr. Sean Mullin:** Can you point me to the reference here?

**Mr. Victor Fedeli:** The DK notes of Mullin meeting—the one that my assistant handed to you. I'm not sure that you'd need notes to remember \$1 billion, but it is there.

**Mr. Sean Mullin:** I just want to make sure so I can answer your question as appropriately as I can.

**Mr. Victor Fedeli:** It's the one we've already had circulated.

**Mr. Sean Mullin:** Is there a page number?

**Mr. Victor Fedeli:** This is the—

**Mr. Sean Mullin:** This document here?

**Mr. Victor Fedeli:** Yes. Right at the top: "Introductory: You took over the file ... up to one billion dollars from TransCanada's viewpoint." Now do you remember discussing \$1 billion?

**Mr. Sean Mullin:** To the extent that I'm trying to understand what this refers to—I mean, this could have been the value of the contract that had been procured already.

**Mr. Victor Fedeli:** How early in the process did you become aware of this billion-dollar number?

**Mr. Sean Mullin:** I think everybody knew that the plant—the value of the plant, going forward—was going to cost ratepayers—

**Mr. Victor Fedeli:** No, I don't think that's what you're talking about.

**Mr. Sean Mullin:** —in that range.

**Mr. Victor Fedeli:** So you can't remember the five politicians who were going to make the decision, and I'll remind you of the billion dollars here that you're discussing.

0920

Let's go to page 2 of that John Kelly memorandum, second paragraph: "On July 3 TransCanada made a proposal to political staff..." You were there. "A call was made to Jamison Steeve and Sean Mullin..." What was the proposal from TransCanada on July 3?

**Mr. Sean Mullin:** So, again, as I referred in my opening statement, these meetings were exploratory, and TransCanada would come in and they would say, "Our first priority is always to build the plant in Oakville"—

**Mr. Victor Fedeli:** So what did they come in and say on this one? A proposal was made on July 3 to political staff. What was the proposal?

**Mr. Sean Mullin:** I'm trying to—

**Mr. Victor Fedeli:** What was the proposal?

**Mr. Sean Mullin:** I'm trying to answer that question.

**Mr. Victor Fedeli:** What was the proposal?

**Mr. Sean Mullin:** So, they would come in, and their first proposal would always be, "We'd like to proceed with Oakville, and if you can legislate a solution to that, that would be our preference." Then they would always—they would also include potential other options that they saw were possibilities. But the government always—so those meetings were always clear that, "We're not here to negotiate those or debate them." They would simply bring them forward as potential other places to put the plant, so to speak.

**Mr. Victor Fedeli:** On October 1, down in the bottom paragraph, there's another meeting here. You were there; Jamison Steeve was there.

**Mr. Sean Mullin:** I was at the meeting with Jamison, yes.

**Mr. Victor Fedeli:** "At that meeting was also ... Jamison Steeve and Sean Mullin..." You were there at the meeting?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** It says here, "No one was there from the Ministry of Energy."

**Mr. Sean Mullin:** That's correct.

**Mr. Victor Fedeli:** That's correct?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** It says here there was discussion about keeping TransCanada "as whole as possible," and it goes on to say, "TransCanada made it clear that they needed a letter to say they would be kept mostly whole regarding the contract. The quid pro quo was that TransCanada would lay low and work on alternatives." Who gave you direction?

**Mr. Sean Mullin:** So, first of all, as I said, there were no offers being made on our part in those meetings, and there were no commitments made in those meetings. I said that in my opening statement. I think Jamison was pretty clear when he was there as well.

The direction to Jamison was to inform TransCanada that the government was making a decision to no longer proceed with the plant there and to let them know that there was a preference to enter into negotiations with the Ontario Power Authority to try and resolve the issue.

**Mr. Victor Fedeli:** And what was the scope of money in your mind at this point in time that it was going to cost the taxpayer?

**Mr. Sean Mullin:** Again, as I spoke to before, the issue was, through a negotiated solution, we didn't really have an understanding of what could be possible. Only through negotiations were we going to be able to figure out what was possible under that scenario.

**Mr. Victor Fedeli:** So you've told us several times that the Premier and the minister were the ones who made the decision.

**Mr. Sean Mullin:** That's my understanding, yes.

**Mr. Victor Fedeli:** So go to the next page, about halfway down that first paragraph. They're talking about TransCanada. "They left this meeting at the Premier's office and said they would play ball" but needed this letter. That's referring back to that quid pro quo that they'd lay low. "Then they met with Mr. Duguid, McCallum," it says here, "and David Lindsay. Duguid appeared to be out of the loop altogether and thanked them for their co-operation and tell them he would be able to tell them more about what was going to happen with the Oakville plant by the end of the month." Then someone scratched out and put "year" here. This is the point where they were angry. We've heard the story many, many times here where they blew a gasket and said they "have a deal with the Premier's office and they told them to go check with" the Premier.



Now, this is the next—in my opinion, a very important statement. They're referring to TransCanada: "They are the ones who told Duguid that the Oakville plant was dead." So who's telling the truth here?

**Mr. Sean Mullin:** So, it's hard—

**Mr. Victor Fedeli:** Did the minister announce that the Oakville plant was dead or no, or did he learn it from TransCanada?

**Mr. Sean Mullin:** I think, one, Jamison was the one who told me that the Premier and the minister had made the decision. So I had no reason to doubt that.

**Mr. Victor Fedeli:** It goes down to the next sentence—just look at that little sentence down there that says, "Well apparently the ministry knew nothing about this discussion with the Premier's office at all."

**Mr. Sean Mullin:** I think the second thing would be, these are based on notes of TransCanada's perspective of a meeting that I wasn't a part of. And third, I think the best person to answer this is the minister, who's going to be here this afternoon—

**Mr. Victor Fedeli:** Oh, I'm sure he will be asked about this later on today.

Let's go back to the handwritten notes. I'm on page 5 from the front, the second page of handwritten notes, down at the bottom: "SM," Sean Mullin.

**Mr. Sean Mullin:** Okay.

**Mr. Victor Fedeli:** "[Government] will return to TC before LTEP is finalized with potential options for other gas plants."

Why did the government guarantee TransCanada the inside track?

**Mr. Sean Mullin:** First of all, there were no guarantees made in this meeting—

**Mr. Victor Fedeli:** "Gov't will return to TC before" it "is finalized." Why was TransCanada given the inside track?

**Mr. Sean Mullin:** What was being put forward was that the OPA would return to TransCanada in order to try and negotiate a solution. The issue was that it was publicly known that there was going to be a plant in Kitchener-Waterloo-Cambridge at the time, and TransCanada had a contract with the government that had been competitively procured for a plant in Oakville. One thing that could have been done was, sure, cancel that plant, pay out damages and then do a competitive procurement for the Kitchener-Waterloo plant.

The other option would be to say, "Is it possible to see if we can take this contract, which is already competitively procured, and transfer it over to Kitchener-Waterloo-Cambridge?" If that was a better deal for ratepayers, then I believe it was in the interest of the province to try and explore those negotiations.

**Mr. Victor Fedeli:** So we've got a minister who doesn't know anything about the deal and we've got a billion dollars being discussed in the Premier's office with nobody telling the minister the scope.

Let's jump down to some of the negotiations, then. In one of these documents—I can't quite recall which one; it won't matter—they talk about Nanticoke a lot. Why was Nanticoke taken out of the loop?

**Mr. Sean Mullin:** If I recall, the need for power was in Kitchener-Waterloo-Cambridge. As I testified earlier, there was no intention on the government's part to modify the long-term energy plan in order to suit the needs of TransCanada. TransCanada was coming in and saying, "Here are things that we could do," but those obviously weren't acceptable because—

**Mr. Victor Fedeli:** You do know that the plant ended up down around Kingston, right?

**Mr. Sean Mullin:** This all happened after me, so I can't really speak to that.

**Mr. Victor Fedeli:** I see; after you left.

Let's talk about the development of that \$712 million. Can you walk me through the development of that offer that went to TransCanada in April?

**Mr. Sean Mullin:** Sure. I'll have to give you some context. After October 7, once the announcement was made public, I was kept abreast of negotiations at a very high level. I think Deputy Minister Lindsay provided a really good description of that last Thursday when he said the OPA would inform the ministry—would not get into the commercial details of the negotiations. The OPA were the experts on that type of process, but they would keep the deputy minister and the minister's office and, from time to time me, informed of what was going on.

**Mr. Victor Fedeli:** Talk to me about the \$712-million offer.

**Mr. Sean Mullin:** I would have been aware that offers were going back and forth, but the issue of one, particularly the \$712 million, was not something that was familiar to me.

**Mr. Victor Fedeli:** Were you familiar that TransCanada rejected that offer?

**Mr. Sean Mullin:** I know that by the end, when TransCanada filed for litigation, they had rejected offers from the government, obviously. Yes.

**Mr. Victor Fedeli:** Were you aware of other offers, other than the \$712-million offer?

**Mr. Sean Mullin:** I was aware, generally, that offers were going back and forth.

**Mr. Victor Fedeli:** Did you ever hear the number "\$712 million"?

**Mr. Sean Mullin:** Not that I recall.

**Mr. Victor Fedeli:** You were never involved in the offer of \$712 million that went to TransCanada?

**Mr. Sean Mullin:** I wasn't involved in any direction on the negotiating strategy. If I was made aware of a particular offer, it would have been at a high level. I'm not saying I never saw \$712 million as a number; it's potential, but it's not something that—

**Mr. Victor Fedeli:** So you might have seen that offer?

**Mr. Sean Mullin:** It's possible that I was told about it.

**Mr. Victor Fedeli:** Quite possible, I would think.

**Mr. Sean Mullin:** But we didn't go into the details of any offer.

**Mr. Victor Fedeli:** I would think it's very possible. When were you screened off the Oakville file?

**Mr. Sean Mullin:** It would have been near the end of April. It was after TransCanada filed their notice of their intention to enter into litigation.

**Mr. Victor Fedeli:** Have you got an approximate date?

**Mr. Sean Mullin:** I tried to reconstruct this, but I don't have any documents. It would have been whenever—TransCanada filed a 60-day notice, and it was very shortlly after that.

**Mr. Victor Fedeli:** So what's an approximate date?

**Mr. Sean Mullin:** Again, it would have been the last two weeks of April.

**Mr. Victor Fedeli:** April 2011.

**Mr. Sean Mullin:** April 2011.

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**Mr. Victor Fedeli:** I'm going to ask him to look at document 1.

While we're handing this document out, I'm going to read you an email from Halyna Perun. This is "Confidential and solicitor-client privileged." The subject is TCE. In the middle, it says, "Deputy Lindsay spoke to energy's chief of staff who then spoke to Sean Mullin. Sean has requested an analysis of options. He is apparently requesting that energy coordinate the development of options that would inform his office as to what could be put on the table in arbitration." It ends with, "He's worried that nothing will happen until it's 'too late.' He's looking for assistance to advance a discussion at least with the OPA to work up advice for PO's consideration."

This is June 6, two months after you were screened off the file. What were you requesting an analysis of options for at that point in time?

**Mr. Sean Mullin:** Honestly, this was—this could be a mistake. I—

**Mr. Victor Fedeli:** So the energy deputy of the Ministry of Energy has made a mistake?

**Mr. Sean Mullin:** It's quite possible my name was confused with somebody else. After I was screened off the file, I did not have any—I was very careful not to have any involvement. It could be that this is somebody in the Ministry of Energy referring to somebody else.

**Mr. Victor Fedeli:** Sean Mullin.

**Mr. Sean Mullin:** They routinely dealt with me on almost all energy matters, but not that one by that point, and so I can't speculate why they included me. It could have been that someone could have said, "PO is asking for this," and it got translated through that "PO" means Sean Mullin normally, but by that point I was absolutely not on that file. I was completely—

**Mr. Victor Fedeli:** Well, let's see if Chris Morley from the Office of the Premier of Ontario also made a mistake, because you're copied on—these are the documents, Clerk, that we received this morning, the big stack here. He doesn't necessarily need to refer to it.

There's a meeting with Chris, Deputy Minister Lindsay, Sean Mullin, Craig MacLennan and Andrew Mitchell. This would be July 11, 2011, and this came as a result of documents that relate to either the Oakville or Mississauga transactions. So were you still involved—

**Mr. Sean Mullin:** I'd honestly need to see that document. Those would be people I would meet with on a regular basis, on many, many issues, but by the—

**Mr. Victor Fedeli:** Well, the many, many issues, why they're in this package is because it's Cabinet Office: "In the interest of disclosure, we have included meeting records in the possession of Cabinet Office that relate to either Oakville or Mississauga transactions...." So did they make a mistake too?

**Mr. Sean Mullin:** It's very possible. If anybody—I don't even know if I was—

**Mr. Victor Fedeli:** A lot of mistakes going on in the Premier's office, according to you.

**Mr. Sean Mullin:** I can affirm that I was not participating in any meetings related to Oakville. Everyone was very careful.

**Mr. Victor Fedeli:** So Deputy Lindsay mentioning you, Sean Mullin, and then "Sean has requested," he's wrong, Halyna Perun is wrong and Chris—

**Mr. Sean Mullin:** This is not Deputy Minister Lindsay referring—

**Mr. Victor Fedeli:** Chris Morley is wrong, as well, here.

**Mr. Sean Mullin:** So can you point me to the actual page?

**Mr. Victor Fedeli:** It's page 8.

**Mr. Sean Mullin:** Page 8.

**Mr. Victor Fedeli:** There's a number 8 at the bottom. It's somewhere in there.

**The Chair (Mr. Shafiq Qaadri):** About a minute.

**Mr. Sean Mullin:** If someone had invited me inadvertently to a meeting, I would have refused to do so. So this says "meeting."

**Mr. Victor Fedeli:** "Shelly's boardroom on the sixth"—

**Mr. Sean Mullin:** I mean, there were lots of meetings going on.

**Mr. Victor Fedeli:** Yes, but the reason these are included in here is—and I'll read it again—"In the interest of disclosure, we have included meeting records in the possession of Cabinet Office that relate to either Oakville or Mississauga transactions, as well as meetings that did not include Deputy Gherson." That's why we have them here, because these are meeting minutes to do with Mississauga and Oakville.

**Mr. Sean Mullin:** But if you look at this document right here, there's absolutely nothing that says that's Oakville—

**Mr. Victor Fedeli:** Except the front page that says that's why they've sent this to us, because it is—

**Mr. Sean Mullin:** But they could have been overly—

**Mr. Victor Fedeli:** So they're wrong too?

**Mr. Sean Mullin:** They could have been overly cautious about—

**Mr. Victor Fedeli:** So there's a lot of people in that government that are wrong—

**Mr. Sean Mullin:** —trying to disclose things as much as—

**Mr. Victor Fedeli:** That's all I can think of, that Deputy Lindsay is wrong, Halyna Perun is wrong—everybody seems to be wrong here but you.

Thank you, Chair.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Mr. Mullin, where we left off was the third page of this document.

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** John Kelly's of June 7, we're on page 3—TransCanada saying they had a deal with the Premier's office, and told the minister to go check with the Premier's office. Did you have a deal with TransCanada?

**Mr. Sean Mullin:** No. As I've said repeatedly, there was no deal made in that meeting. We weren't authorized to make a deal. The two points that were communicated to them were that the government has made a decision not to pursue the plant and that there was a preference to try and resolve it through negotiations.

**Mr. Peter Tabuns:** So did you or anyone in the Premier's office, following on these minutes, these notes, go to TransCanada and say, "Hey, guys, we actually don't have an agreement"?

**Mr. Sean Mullin:** These notes—this looks like it was from June 7. I was no longer on the file at that time.

**Mr. Peter Tabuns:** No. This is from the fall of 2010.

**Mr. Sean Mullin:** I personally was never aware of this transcription until this process started now. I think this was communicated to the government once litigation had started, and that was when I was taken off the file. I wouldn't have had an opportunity to even be aware that this is TransCanada's account of how those meetings went, to be honest, until this process with the committee started in the last couple of months.

**Mr. Peter Tabuns:** Can you tell us how you were prepared for today's testimony?

**Mr. Sean Mullin:** I read all the committee testimony on the web.

**Mr. Peter Tabuns:** And there was no one who briefed you or went through—

**Mr. Sean Mullin:** I didn't speak to anybody in the government. I didn't try and do any preparation. I didn't speak to legal counsel.

**Mr. Peter Tabuns:** Can you tell us when you were first told to start looking at options for cancelling the Oakville plant?

**Mr. Sean Mullin:** I believe Jamison spoke to the Premier before that first meeting with TransCanada. I don't think it was necessarily—the decision hadn't been made to cancel the plant, but it was more along the lines of, "What are we going to do in this situation? Is the government willing to pass legislation to override the local concerns, for example?" Those things were being considered throughout the summer. The decision was ultimately made at the end of September.

**Mr. Peter Tabuns:** Did you regularly delete your emails as part of practice in your office?

**Mr. Sean Mullin:** That wasn't my practice, no.

**Mr. Peter Tabuns:** Did you ever produce any hard-copy memoranda on these gas plants?

**Mr. Sean Mullin:** I never wrote any notes—no memos—as far as I'm aware of. I know I would participate in things like—I believe I edited the questions and answers, for example, that led to the day that the announcement was made; those types of things.

**Mr. Peter Tabuns:** It's interesting to us that apparently your emails were kept for a year after you left, and they were deleted shortly after this committee started asking for documents.

**Mr. Sean Mullin:** I can't speak to that.

**Mr. Peter Tabuns:** Were you given instructions to keep documents?

**Mr. Sean Mullin:** What I was told when I was being screened off the file was that I would be debriefed by lawyers and that I should bring my documents when I did that. I brought my file and provided that to them.

**Mr. Peter Tabuns:** Prior to being screened off, were you told that you were supposed to keep your records for archives, for record-keeping purposes?

**Mr. Sean Mullin:** Not specifically with respect to this file—

**Mr. Peter Tabuns:** No, I mean generally.

**Mr. Sean Mullin:** Broadly speaking, I think I understood that.

**Mr. Peter Tabuns:** And did anyone tell you that destruction of documents was illegal?

**Mr. Sean Mullin:** Not in those words.

**Mr. Peter Tabuns:** What did they tell you?

**Mr. Sean Mullin:** I don't remember someone saying—I knew that that was a policy of the government, I believe.

**Mr. Peter Tabuns:** Okay. After the October 7 announcement, did you have any further involvement with TCE from October 7 until you were screened off the file?

**Mr. Sean Mullin:** As I said, I met with them in April 2011. The first meeting was at their request. We had staff and ministry lawyers there. They presented and we simply listened.

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**Mr. Peter Tabuns:** And what did they present?

**Mr. Sean Mullin:** I believe they, at a high level, were presenting their opinion that their proposal, whatever it was, was acceptable. But it was getting into a level of detail—engineering issues that the two sides were arguing over—that quite frankly wasn't something that we were able to appreciate. That's precisely why we had the OPA undertake the negotiations. I think at this point, TransCanada had thought that the negotiations weren't going well and they wanted to meet with the government. We met and listened after talking to counsel, but that was the extent of that meeting.

**Mr. Peter Tabuns:** And did you have two meetings in that April?

**Mr. Sean Mullin:** Yes. Afterwards, Craig and I—I think Craig spoke to this in his testimony as well—met with the director of government relations.

**Mr. Peter Tabuns:** And who was that person?

**Mr. Sean Mullin:** Chris Breen. That was only after speaking to counsel to see if that was okay and making



sure that we conducted ourselves appropriately. We again made it clear it was without prejudice; we listened and didn't make any commitments.

**Mr. Peter Tabuns:** So what was Chris Breen telling you in that second meeting in April?

**Mr. Sean Mullin:** I think it was more just an update on where they were. At that point, I think it was very, very close, if I recall, to the litigation. I think it was more to simply say, if I recall, that TransCanada wasn't kind of bluffing about going to litigation. We listened. In the end, nobody was anticipating not letting that deadline pass, as I recall, and that deadline passed.

**Mr. Peter Tabuns:** Did you take notes in those two meetings in that April?

**Mr. Sean Mullin:** If I did, they would have been in my package, I believe. I'm not sure—if I did, they would have been in that package.

**Mr. Peter Tabuns:** Okay. We will try to get hold of those.

Jamison Steeve indicates in his interview notes that you're the person who would know what the Oakville generating station contract was worth to TransCanada.

**Mr. Sean Mullin:** This is the handwritten notes or the—

**Mr. Peter Tabuns:** No, Jamison Steeve. As you were interviewed by the Ministry of the Attorney General, he was also interviewed by the Ministry of the Attorney General.

**Mr. Sean Mullin:** Okay. So that's in this package.

**Mr. Peter Tabuns:** No, it's not in that package that you have.

**Mr. Sean Mullin:** Okay. Sorry.

**Mr. Peter Tabuns:** In his interview, he indicated that you were the person who would know the value of this contract to TransCanada.

**Mr. Sean Mullin:** Again, I'm not an expert on commercial contracts. I'd have to see specifically the reference that Jamison was referring to. I think I was more familiar than Jamison was, because he was at a higher level, but as I said, the issue during the summer of 2010 was of a lot of uncertainty about what outcomes would happen and what could be achieved under negotiation. So without seeing his reference exactly, I wouldn't want to speculate on that.

**Mr. Peter Tabuns:** Did you know what the contract was worth in terms of profit to TransCanada Enterprises?

**Mr. Sean Mullin:** I don't have a number. I think that was—

**The Chair (Mr. Shafiq Qadri):** One minute—

**Mr. Sean Mullin:** —part of the disagreement, because even the OPA would not know what assumptions and risk TransCanada had built into their financial model, for example, right?

**Mr. Peter Tabuns:** Did Shelly Jamieson sit down with you when she screened you off?

**Mr. Sean Mullin:** I was told by Jamison. He had said that he had had a conversation with Shelly.

**Mr. Peter Tabuns:** Did they warn you that you might be drawn into this legal vortex personally?

**Mr. Sean Mullin:** What they said was that it was possible, because we had met with them and because Craig had met with them, that we could be called as witnesses, and they wanted to make sure that we weren't involved going forward because if we were in subsequent meetings—once you're on the stand, you could be asked any question. So it would be about preserving the government's negotiating ability or preserving the government's position within litigation.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. To Mr. Del Duca.

**Mr. Steven Del Duca:** Thank you, Mr. Mullin, for being here. I know that my colleague Mr. Delaney was asking questions in the first round. I just wanted to clarify or go over one thing really quickly. Can you remind us when you were screened off the file?

**Mr. Sean Mullin:** It would have been the last two weeks of April. I don't know a precise date, but it was very soon after the 60-day notice was issued. TransCanada had to provide a 60-day notice before filing a lawsuit. Once that was in place, the government started preparations for litigation. It was very shortly after that.

**Mr. Steven Del Duca:** That would have been the last two weeks of April 2011, right?

**Mr. Sean Mullin:** Yes, correct.

**Mr. Steven Del Duca:** After that point, then, you wouldn't have participated in any of the meetings, discussions, etc. regarding this?

**Mr. Sean Mullin:** Absolutely. If I had been inadvertently invited, I would have notified somebody and not attended that meeting.

**Mr. Steven Del Duca:** Thank you. I want to pick up a little bit from where Mr. Delaney left off regarding the Mississauga relocation.

I know he talked about the increased risks in terms of future negotiations if the government and the OPA had simply ripped up the deal in question. Based on that, clearly it was determined that the best route forward was to renegotiate regarding an alternative site. Now, the Auditor General talked about the OPA's weakened bargaining position because of the tight timelines to halt construction.

In her testimony, former cabinet secretary Shelly Jamieson testified about the importance of speed when negotiating a relocated deal with a company. She told this committee, "As long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed, to me, was important."

The auditor testified that the longer construction continued, basically you would be putting money into the ground. Would you agree that timing was an important factor, and that cancellation costs could have increased if construction had continued?

**Mr. Sean Mullin:** I think that was one of the things that was always taken into consideration, which was—when I referenced earlier the notion of the option of



simply letting it play out and hoping that TransCanada would fail, the risk associated with that would be that some costs would increase. Once I believe the Premier and the minister decided it was not appropriate to have that plan go forward, then it made sense to make that announcement as soon as possible and have the OPA start to negotiate as soon as possible.

**Mr. Steven Del Duca:** Okay. So the auditor also did testify, regarding the increasing media scrutiny of the construction, that it contributed to the pressure to get a deal done as soon as possible.

I guess I would say one can only imagine that adding to that pressure were the political games that were being played quite frequently by the opposition. I'm sure, for example, you heard or you're aware that the PCs held an event at which they inflated a big red elephant beside the construction site. They also circulated photos to the media a few weeks after the election showing that construction was still ongoing.

From your perspective, this type of pressure couldn't have been helpful to the negotiating position of OPA.

**Mr. Sean Mullin:** To be honest with you, I really wasn't involved in Mississauga. I can understand your argument, but I wasn't really involved in the Mississauga plant. I left government literally the day after the election and wasn't involved in any of those negotiations. I can certainly understand that that pressure would make it difficult to undertake negotiations.

**Mr. Steven Del Duca:** Thank you. I'm going to move now to the discussion around commercially sensitive information. I'm guessing that you're probably aware that in May 2011, the estimates committee passed a motion. Mr. Leone asked for all correspondence within a specific time frame in the Ministry of Energy and the OPA relating to the Oakville and Mississauga gas plants.

At the time this motion was passed, complex and sensitive negotiations were ongoing with both companies. In your view, what would it have meant if the OPA's and the province's negotiating position was prejudiced because the company had access to confidential and privileged information at that point?

**Mr. Sean Mullin:** I think it's really difficult for me to comment on this. That was a year after I had been taken off the Oakville file and six months after I had left the government. I know, having reviewed the testimony, that experts like the secretary of cabinet spoke to information coming out there in public—it would be very difficult to undertake negotiations and get the best deal.

I understand that argument. But to comment specifically at that point, I don't really have expertise to do so.

**Mr. Steven Del Duca:** You mentioned some of the testimony of some of the experts we've had here. For example, former secretary of cabinet Shelly Jamieson did testify when here, "It would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I

would have been concerned about that in any negotiation." That's a quote from Shelly Jamieson.

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The Auditor General also responded, "It's like in poker. You don't show the people around the table your cards."

Do you agree with those comments?

**Mr. Sean Mullin:** Yes, they make sense to me.

**Mr. Steven Del Duca:** I want to talk a little bit about the fact that, as we've heard time and time again here at this committee, all three political parties committed to dealing with the plants in the same way. As a former Liberal staff person, I assume that you would have paid fairly close attention to the policies and commitments and ideas of both the PC and NDP parties. Is that true?

**Mr. Sean Mullin:** Generally, yes, and on the Oakville issue I was aware that no parties were really in favour of that going forward after we'd made the announcement.

**Mr. Steven Del Duca:** During his testimony here at this committee, the mayor of Oakville, Rob Burton, did tell us that he had "won promises from all parties to stop the proposed power plant."

With the Mississauga power plant, Mayor Hazel McCallion confirmed that she thought "all parties would have cancelled it."

We have transcripts, we have campaign literature and we have robocall scripts that highlight the commitments made by the opposition parties to move the plants. Does it surprise you that the opposition now seeks to effectively wash their hands of this issue and comes after the government for following through on the commitments that were made by all three parties?

**Mr. Sean Mullin:** I guess "surprised" is probably the wrong word. It is inconsistent, I guess, with what they promised at the time.

**Mr. Steven Del Duca:** Okay. Is there anything else you'd like to share with the committee today?

**Mr. Sean Mullin:** No. Thank you.

**Mr. Steven Del Duca:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the Conservative side. Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** How much money did the Premier approve to settle the Oakville matter?

**Mr. Sean Mullin:** I never spoke to the Premier and I have no knowledge whether he approved a particular number. I know, going into negotiations, that the issue was uncertainty about the cost and only through the negotiations could both parties figure out what was possible.

**Mr. Victor Fedeli:** In one of the notes that we have in terms of the Attorney General investigation, somebody asked Jamison Steeve, "Did you make any offer of \$650 million?" And his answer is, "No, that would have required approval from the Premier." So would you concur that offers of \$650 million, or the \$750 million—that those numbers would have had to have been approved by the Premier before ever being made to TransCanada?

**Mr. Sean Mullin:** Without again seeing what that note exactly said, what I know is that Jamison did not



have permission in those meetings to negotiate, and so anything involving an offer, if it was done by Jamison and myself, would have absolutely required the Premier; and we had no intention at all of entering into those negotiations.

**Mr. Victor Fedeli:** Do you know, then, how much money, the upside limit, that the Premier approved in the negotiations with TransCanada?

**Mr. Sean Mullin:** Again, I don't have any knowledge of what the Premier approved and I don't believe that it was that level of detail. I think the Premier approved the OPA and TransCanada entering into negotiations to see what was possible. Whatever was going to come out of there would have had to come back to the government, absolutely, and that would have required a final approval; I don't disagree with that. But because that uncertainty exists, there wasn't an ability to kind of try and scope it out from the beginning.

**Mr. Victor Fedeli:** Did you provide the Premier or the Minister of Energy with information on the costs other than merely the sunk costs?

**Mr. Sean Mullin:** I didn't provide either of those people with any information about costs. The costs about sunk costs I received from the ministry.

**Mr. Victor Fedeli:** I'm going to read a whole bunch of pages from the Ministry of the Attorney General file here. You don't need them in front of you, necessarily. The starting one is Ben Chin, and he says, "We have some understanding that there were meetings on October 1 and 5 with TransCanada saying, 'You promised to keep us whole'"—I'm going to read about 10 of these, by the way, so you don't need to look for them. I'm going to read them in here. "You promised to keep us whole." Did Jamison or Sean say to you what their response was?" His next sentence was, "My understanding was that they agreed TransCanada should be kept whole." The next sentence is, "I was told that by Sean Mullin." The next page says, "I don't think any of us anticipated there was going to be a disagreement on what was going to be included in 'made whole.'" Down in the middle of that page it says, "If you have a contract with the government and have sunk costs in, you want to be kept whole in terms of your revenue from that contract. The question was, does that mean a net revenue stream over 20 years? The answer was, 'That's right.'"

When we get into Craig McLennan's Ministry of the Attorney General file, "They were always holding over our heads in meetings with the PO"—I presume that is the Premier's office. Would you acknowledge that PO is the Premier's office in this case?

**Mr. Sean Mullin:** That acronym is generally used.

**Mr. Victor Fedeli:**—"in meetings with the PO, they were promised to be kept whole and negotiations with the OPA were not going in that direction." He's saying to us here, Craig McLennan is saying—the meetings in the Premier's office where "they were promised to be kept whole." I don't know who this person is: "Barrack says they came away from a meeting at the PO with the promise that they would made whole. Any instructions

from the PO likely came from Ben Chin and possibly Colin. I believe Ben had a discussion with the PO and was told, 'Yes, that's what the instructions are.'"

A little later it says, "I see two scenarios: (1) a sole-source contract or (2) a competitive bid for Cambridge, but we would need an assignment," and they go on about the turbine assignment.

A little later he says, "But we were told we just had a meeting with the government of Ontario where they made a promise to be kept whole. I would have said that to Sean Mullin."

So in all of these discussions about being kept whole, the many that are here in the testimony to the Ministry of the Attorney General, how much do you think they were talking about when they talk about being "kept whole"? Do you think it is more than the sunk costs of \$40 million?

**Mr. Sean Mullin:** I can't speak to what they were interpreting by that, under "kept whole." What I can say—

**Mr. Victor Fedeli:** So you think that's an interpretation?

**Mr. Sean Mullin:** Sorry?

**Mr. Victor Fedeli:** You think the expression "being kept whole" is an interpretation?

**Mr. Sean Mullin:** I think there are lots of ways to interpret that. What I can say is—and again, Jamison referenced this in his testimony—the only mention of "kept whole" or "close to whole" in our meeting came from the CEO of TransCanada, and the way that they presented it was, you know, that would be, on their side, what they would be hoping for. We were very clear, and in fact our number one objective going into that meeting was to not make a commitment, even inadvertently. So, afterwards, whether they were claiming to other people in government that that commitment had been made, I can't speak to why they would do that, but—

**Mr. Victor Fedeli:** Well, all I can speak to is about the 10 examples that I have here of everybody saying that TransCanada is to be kept whole, that the Premier's office—PO—the Premier's office is saying they'll be kept whole. They've had it in a discussion from you where it says, "My understanding was that they agreed TC should be kept whole. I was told that by Sean Mullin." So are you saying here today that nowhere in your discussion with Ben Chin, another staffer that—you're shaking your head no.

**Mr. Sean Mullin:** No.

**Mr. Victor Fedeli:** You've never said this, even though he's—

**Mr. Sean Mullin:** No. So in my conversations—

**Mr. Victor Fedeli:** He says to the Ministry of the Attorney General, "My understanding was that they agreed TC should be kept whole. I was told that by Sean Mullin." Is he not right in this?

**Mr. Sean Mullin:** I don't believe he's correct, no.

**Mr. Victor Fedeli:** You don't believe Ben Chin is correct?



**Mr. Sean Mullin:** When I spoke to Ben over that period, and Colin, I was very clear to say, just so they were clear and that TransCanada didn't come back to them, that no commitments had been made and that there was no direction from the Premier's office in terms of—

**Mr. Victor Fedeli:** So Ben Chin wasn't correct. Craig McLennan, when he says, "They were always holding over our heads that in meetings with the PO they were promised to be kept whole," he's not correct either?

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**Mr. Sean Mullin:** That's TransCanada making that claim; that's not Craig saying that promise was made.

**Mr. Victor Fedeli:** And when they further say that Barrack, whoever he is, says they came away from a meeting with the PO with a promise that they would be kept whole, he's wrong too?

**Mr. Sean Mullin:** I believe he's a lawyer for TransCanada, who was acting on their behalf—

**Mr. Victor Fedeli:** But he's wrong too, then?

**Mr. Sean Mullin:** Well, he's representing their side, but that wasn't what happened in the meeting.

**Mr. Victor Fedeli:** In the testimony to the Ministry of the Attorney General: "Any instructions from the PO likely came from Ben Chin. I believe Ben had a discussion with the PO and was told, 'Yes, that's what the instructions are.'" He's wrong about that one too?

**Mr. Sean Mullin:** It's not what happened in the meeting.

**Mr. Victor Fedeli:** The meetings with Michael Lyle: When Michael Lyle was speaking with the Ministry of the Attorney General, he talks about a sole-source contract versus a competitive bid. Do you know what they mean by a sole-source contract? Is that language you do understand?

**Mr. Sean Mullin:** What I do understand was that the intention of the negotiation was to transfer the existing contract, which was done competitively, to a new location. Rather than paying out a lawsuit and at the same time doing a different open bid—if that was cheaper for the ratepayers, then that was a course of action that should be undertaken.

**Mr. Victor Fedeli:** So when Michael Lyle says, "But we were told we just had a meeting with the government of Ontario where they made a promise to be kept whole," he's not accurate either?

**Mr. Sean Mullin:** Again, that promise was not made.

**Mr. Victor Fedeli:** Did anybody—well, I'm not even sure where to go with this one. Everybody seems to be wrong.

Had you ever heard the expression "buckets of costs" before, from Shelly Jamieson?

**Mr. Sean Mullin:** I don't believe I talked to Shelly Jamieson about this file.

**Mr. Victor Fedeli:** Okay. Thank you very much; I'm not sure for what, though, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

We have three motions before the committee. I'll entertain them in order of receipt. Mr. Tabuns, you may begin.

**Mr. Peter Tabuns:** I move that the demand projections for the SWGTA and the province as a whole that are cited as shaping the long-term energy plan and the Oakville decision be provided by the Minister of Energy as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Everyone is aware of this particular motion? You have copies, I presume?

If there's any discussion, it is to be had now.

Seeing none, those in favour of the motion, if any? Those opposed? Motion carried.

Mr. Tabuns.

**Mr. Peter Tabuns:** I move that the secretary of cabinet produce Sean Mullin's notes from any of his meetings with TransCanada Energy and provided to counsel in the debrief referred to by Mr. Mullin as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Discussion?

All in favour? All opposed? Motion carried.

Thank you, Mr. Tabuns.

Mr. Delaney, I believe this is yours.

**Mr. Bob Delaney:** I move that the Standing Committee on Justice Policy sit on Wednesday, April 24, 2013, from 3:15 p.m. to 5:45 p.m., and that Colin Andersen, CEO of the Ontario Power Authority, be invited to appear, if available, and be scheduled for 110 minutes, with 20 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis, beginning with the government caucus.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I'm just wondering about the timing. Does 110 minutes work out?

In any case, any discussion on this?

**Mr. Peter Tabuns:** Is there a particular reason that he needs to be called tomorrow rather than in a normal rotation as a witness? You have him on your list, don't you?

**Mr. Bob Delaney:** We were down a witness, and in the light of the letter from the Ministry of Energy dated yesterday, we thought we would call him.

**Mr. Peter Tabuns:** What was the ministry letter saying?

**Mr. Bob Delaney:** It's this one here, that I think you've got in your package.

**Mr. Peter Tabuns:** Might you just summarize it for us? Go ahead.

**Mr. Bob Delaney:** Okay. It basically says that to support the work of the committee, the OPA will be in a position to share their current estimate of longer-term costs and savings associated with the relocation of the Oakville plant. It's a question that both the PC Party and the NDP had been raising in the past, and perhaps we can get an earlier rather than a later update.

**Mr. Peter Tabuns:** Mr. Chair, my inclination right now would be to say, "Just add it to the normal rotation."

If you want to hold it down and reintroduce it this afternoon after I've had a chance to talk with folks, then you might have a better chance to pass it.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, will you stand down the motion?

**Mr. Bob Delaney:** Yes, Chair, we will stand it down until this afternoon.

**The Chair (Mr. Shafiq Qaadri):** That's fine. The other thing I would just advise—the other point to note here—is that Mr. Delaney has asked for 20 minutes of opening remarks as opposed to the usual five. There is a question of equity between all the various witnesses: another thing to consider.

The committee is recessed until this afternoon. Thank you.

*The committee recessed from 1005 to 1500.*

**The Chair (Mr. Shafiq Qaadri):** I call to order this meeting of the Standing Committee on Justice Policy. The first order of business is the motion stood down from this a.m. Mr. Delaney, I'd invite you, if you're going to move any amendments, to do so now.

**Mr. Bob Delaney:** No, Chair. I'm not sure if I had a chance to read the motion, but I will read it, and I will advise members that, as I read it, there will be a tiny change in the starting time, on advice of the Clerk.

I move that the Standing Committee on Justice Policy sit on Wednesday, April 24, 2013, from 3:30 p.m. to 5:45 p.m., and that Colin Andersen, CEO of the Ontario Power Authority, be invited to appear, if available, and be scheduled for 110 minutes with 20 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis, beginning with the government caucus.

**The Chair (Mr. Shafiq Qaadri):** I thank you for reading it for a second time, Mr. Delaney, and I invite comments on this motion, if any, before we entertain the vote.

**Mr. Victor Fedeli:** I have an amendment.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, the floor is yours: your amendment to the main motion, please.

**Mr. Victor Fedeli:** I move an amendment to the Liberal motion re the OPA witness:

(1) Strike everything after "I move that the Standing Committee on Justice Policy"; and

(2) Add in, "invite Mr. Andersen, CEO of the Ontario Power Authority, to testify before the committee on Tuesday, April 30, 2013, which is the next available witness slot designated for a Liberal witness, and that Mr. Andersen be invited under the same conditions and time constraints as other witnesses."

**The Chair (Mr. Shafiq Qaadri):** Fair enough. I think everyone can appreciate the import of this particular amendment. Are there any comments before we entertain the vote?

**Mr. Bob Delaney:** Chair, I'd like a ruling as to whether or not this is in order, because other than saying, "I move that the Standing Committee on Justice Policy," which could in fact be a motion to do almost anything, the rest of it is a brand new motion. I would ask that this be out of order.

**The Chair (Mr. Shafiq Qaadri):** An exceptionally good question, Mr. Delaney. Answer forthcoming.

The motion is in order. Any further comments before we vote on it?

**Mr. Bob Delaney:** Only that this appears to be a ploy to ensure that our witness scheduled for that time slot, Tim Hudak, doesn't appear before the committee, in much the same way as, by some curious coincidence, no Conservative candidate has yet accepted an invitation to appear before the committee.

**Mr. Jim Wilson:** We'll deal with that later

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Any further comments? On the record, Mr. Wilson?

**Mr. Jim Wilson:** Yes, we'll deal with that later, I'd say to Mr. Delaney. It's completely irrelevant to this motion.

**The Chair (Mr. Shafiq Qaadri):** Any further comments before we entertain the vote?

All those in favour? All opposed? The amendment is carried, and I think that puts us in a bit of a logical bind here, because it essentially neutralizes the main motion.

**Mr. Bob Delaney:** That was my point.

**The Chair (Mr. Shafiq Qaadri):** It probably was the point, yes.

**Mr. Bob Delaney:** As that is an amendment, we still have to vote on the motion.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Those in favour of the main motion—

**Mr. Bob Delaney:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote.

**Mr. Victor Fedeli:** Chair—

**The Chair (Mr. Shafiq Qaadri):** I know what you're going to ask, but we still vote; I'd just invite you to go through the exercise.

**Mr. Victor Fedeli:** Is that the proper procedure after an amendment that—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Main motion vote; recorded vote.

All those in favour, if any? All those opposed?

All right, let's try that again. It is a recorded vote. I just refresh the committee's memory. We are now voting on the main motion as presented by Mr. Delaney. I would invite you to figure out what side of this particular main motion you're on. It's a recorded vote.

#### Ayes

Albanese, Delaney, Del Duca.

#### Nays

Clarke, Fedeli, Natyshak, Tabuns, Wilson.

**The Chair (Mr. Shafiq Qaadri):** The main motion is now officially defeated. The amendment, I guess, carries? Yes.



**The Clerk of the Committee (Ms. Tamara Poman-ski):** The amendment carries; the motion is lost.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

MR. CHRIS BENTLEY

**The Chair (Mr. Shafiq Qaadri):** I now invite our first witness, who will be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Chris Bentley:** I do.

**The Chair (Mr. Shafiq Qaadri):** On behalf of the committee here and Parliament and on behalf of the Legislature, I would like to welcome the honourable Chris Bentley to come before us and testify. As many of you will know, Minister Bentley held portfolios including Minister of Energy, Attorney General, Minister of Aboriginal Affairs, Minister of Training, Colleges and Universities, Minister of Labour, and, as he self-identifies on his Facebook page, he is a long-suffering Leafs fan, but we hope a fellow Qaadri will be able to remedy that over time.

Minister Bentley, you have five minutes in which to make your opening address. The Chair thanks you for the written version, and I invite you to please begin now.

**Mr. Chris Bentley:** Thank you, Mr. Chair. I regard it to be a great privilege and honour to have served the people of Ontario for almost a decade, including my time as Minister of Energy. I want to say clearly and directly that I've always worked as hard as I can, used my best judgment and acted in good faith in the best interests of the people I represent in all of my capacities. I may have made mistakes, like anybody could have, but I absolutely never did anything against the interests of those I represented.

I was appointed Minister of Energy on October 20, 2011. The OPA and TransCanada were already involved in an arbitration arising from the cancellation of the Oakville gas plant. The government had also committed during the 2011 election to cease construction on the Mississauga gas plant and relocate it. When I became minister, I acted quickly to ask the OPA to negotiate with Greenfield to stop construction of the Mississauga gas plant and, if possible, to relocate it.

The Mississauga and Oakville negotiations were challenging and slow. Neither was close to a conclusion in the spring of 2012. In addition, in March 2012, EIG, Greenfield's financier for Mississauga, sued in both Ontario and New York. The lawsuits did not go well from the OPA or Ontario's perspective.

I testified before the estimates committee between May and July 2012. The committee asked for certain documents about the Mississauga and Oakville gas plants. The advice I received, and my belief, was that producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our

ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.

Throughout the spring and summer of 2012, I was trying to reconcile two principles that appeared to conflict on this occasion: the financial interests of the people of Ontario and the respect for the privileges of this Legislature. I always hoped a resolution would be reached that could achieve both.

I gave our Mississauga negotiating team until the last day of estimates to reach an agreement, if possible. I would be reporting to the committee on the status of that matter regardless.

As you know, we reached an agreement on July 9. I held a press conference on July 10, and I wrote to the committee advising that the OPA and the ministry would be making some disclosure. Because of my continued concerns about the waiver of privileges, I asked the estimates committee in my July 11 letter to continue to respect the confidentiality associated with the documents by exempting them from disclosure.

Throughout the committee proceedings and after, I understand that various members of the Legislature attempted to negotiate a compromise, for example, similar to recent precedents in the federal House of Commons, but ultimately were unable to do so.

After the Speaker's ruling on September 13, 2012, I immediately rose in the Legislature and said that I would comply by the deadline of September 24. I told our negotiators that the documents would be released on September 21 and to try and conclude an agreement by that date, but waited when I learned on September 21 that the parties were very close to an agreement. They reached an agreement on September 24 in the early morning hours. As this committee knows, documents were disclosed and produced that day in accordance with the Speaker's ruling.

My direction to my staff and to the ministry throughout, and my expectation, was always to disclose every document responsive to the request, everything that was asked for.

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By the 27th, I learned the OPA were concerned that they may have missed some documents and were going to do an additional search. A letter was filed with the Clerk on the 27th. On Friday the 28th, my chief of staff and the deputy minister advised me that the ministry may have inadvertently missed some responsive documents. I instructed my chief of staff and the ministry to conduct whatever searches were necessary. When it was later determined that ministry documents were missed, I again instructed my staff and the ministry to provide everything that was asked for. To the best of my knowledge, all of the relevant documents were disclosed and produced by October 12.

Let me be clear: I always intended that everything asked for would be disclosed. In my view, disclosing these documents to the public in the midst of highly



sensitive negotiations and court cases would have hurt the province's ability to limit costs and negotiate a favourable resolution, and would have cost the people of Ontario more. At the same time, I acknowledge the estimates committee's and the Legislature's right to demand disclosure of the documents, regardless of the sensitivities to the negotiations or the waiver of any privileges. When it became clear that no compromise was possible and the Speaker made his ruling, I said the documents were going out. I acted and have always acted in good faith and in the best interests of this province and its people.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bentley. I'd invite Mr. Del Duca to please begin the government's questioning—20 minutes.

**Mr. Steven Del Duca:** Thank you, Mr. Bentley, for being here today with us. Thank you also for your many years of exemplary service to the people of Ontario. Just before I begin with questions, is there anything else you'd like to add to your opening statement at all?

**Mr. Chris Bentley:** No, thank you.

**Mr. Steven Del Duca:** Okay. As you may know, we are now into the eighth week of hearings on this particular matter. We've heard testimony from 19 witnesses. Given your direct involvement with some of these issues and some of the accusations that had been made, we felt that it was really important for you to be given an opportunity to attend and speak to these issues, which is why we took the step, on this side of the table, to request your attendance here at committee. I want to confirm, though, just for the record, that you are here voluntarily; that there is no Speaker's warrant or anything else of that nature that's compelling you to be here today.

**Mr. Chris Bentley:** No, I'm here.

**Mr. Steven Del Duca:** Thank you very much.

I think most members here are aware of your background and experience. I know the Chair of the committee did reference some of that in his opening. But for those who might be watching or reading through these proceedings, prior to your election in 2003, would you say you had a successful legal practice in the London area?

**Mr. Chris Bentley:** I practised law for almost 25 years in the city of London, and from time to time throughout Ontario.

**Mr. Steven Del Duca:** Terrific. And you were elected provincially to this Legislature by your constituents in London three times: 2003, 2007 and again in 2011. Is that correct?

**Mr. Chris Bentley:** That's correct. I was very fortunate to have been elected three times by the people of London West.

**Mr. Steven Del Duca:** And they were lucky to have you; that's for sure.

I think you mentioned this in your opening, so forgive me if I'm going over this territory again. Subsequent to the 2011 election, you were named the Minister of Energy, and at the time you were given the portfolio the decisions with respect to the relocation of the Missis-

sauga and Oakville plants had already been made. Is that correct?

**Mr. Chris Bentley:** The decision with respect to cancelling the Oakville gas plant had been made and, as I understand, there were negotiations under way. The commitment was made during the campaign that if we were re-elected we would stop construction of the Mississauga gas plant and work to relocate it to another place, and that's what I inherited—both of those—when I became the minister.

**Mr. Steven Del Duca:** So is it fair to say that those relocations created a need to address some pretty complex contractual relationships between TransCanada, Greenfield and the OPA?

**Mr. Chris Bentley:** I think it would be fair to say that that was a very challenging time. You know, I think everybody in Ontario knows that if you rip up a contract without just cause, it's going to cost you money. If you rip up a big contract, it's going to cost you big money. And if you rip up a big contract that's already under construction, it's going to cost you big money with big complications. That really summarizes Oakville and Mississauga. There is no question that working through the issues that were occasioned by the determination not to proceed with the gas plants in Oakville and Mississauga—and you've heard lots of good reasons why they should not have gone there; lots of good reasons. Working through those contractual issues, the negotiations, was very, very challenging. There was a substantial amount of money at stake, after all. They were both 20-year power agreements, and the total payouts over 20 years would have been billions, up to almost \$5 billion over the 20 years under those contracts.

**Mr. Steven Del Duca:** Thank you. So I think it is fair to say, then, that you, at this point in time, did inherit what could be termed a pretty complex litigation file, if I could call it that.

**Mr. Chris Bentley:** They were complex in just about every way.

**Mr. Steven Del Duca:** I'd like to spend a couple of minutes talking a little bit about your preparation for your appearance at estimates committee back in May 2012. Can you take us through how you would have prepared for your appearance there?

**Mr. Chris Bentley:** I had a little over seven days' notice; I can't remember exactly how many days. Fairly consistent with the practice I recall in my other roles as a minister, a binder in preparation for estimates was prepared by the ministry, the public service side, and then we had discussions about the type of issues and the type of questions that might be asked. Obviously, one of the very significant issues was the state of the very complex, at this point in time, difficult and slow negotiations with respect to Oakville and Mississauga; the fact that Oakville was also in an arbitration proceeding, the fact that discussions were going on and lawsuits had been launched by the financier for Mississauga on both sides of the border, in I believe New York and in Ontario, both of which were serious complications. So as part of the preparation and the discussions, there were discussions



with lawyers, with legal staff, from both the Ministry of Energy and the Ministry of the Attorney General about what would happen if I was asked questions about those negotiations or about the confidential solicitor-client-privileged, commercially sensitive, some from third parties, documents that were part of the negotiations or part of the history here. The advice I received about the documents was that there were many that were solicitor-client, were privileged, were commercially sensitive, and that the effect of releasing documents or discussing the negotiations would be detrimental to the interests of Ontarians, meaning it could seriously affect the negotiations, the arbitration or the lawsuits and cost Ontarians significantly more.

**Mr. Steven Del Duca:** So based on that advice, you would have had—or did you have concerns about finding that balance, striking that balance between those competing interests?

**Mr. Chris Bentley:** Well, it was a very challenging situation. I was coming before a committee. The committee has the right to ask questions. We expected that they might start out on the first day by asking questions about the state of the discussions, in particular where we might end up with respect to costs. Now, at that point in time, neither case was close to a resolution—neither—so the costs could not be ascertained. But what could be ascertained is that having a public discussion about what I understood generally to be in the documents or about the negotiations could place the negotiations or the lawsuits or the arbitration at serious risk in terms of the cost to Ontarians, meaning we'd end up paying more.

**Mr. Steven Del Duca:** I think it's safe to say, certainly from my standpoint, that the concerns you've talked about here are extremely well founded.

Now, you may know that we've had a number of witnesses come before us at committee and testify under oath about these very issues, these very concerns. For example, former secretary of cabinet Shelly Jamieson had this to say about the potential release of confidential contractual information. I'm going to quote her here: "It would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I would have been concerned about that in any negotiation." That's what Shelly Jamieson had to tell this committee.

Your former deputy minister, Serge Imbrogno, had this to say to us: "We were being sued ... for ... \$300 million." If "they were able to get information that" would "have made their case stronger" it would "have put us at risk there. Again, negotiating with Greenfield, if they" could have used this information to get "leverage in negotiations," it would have put us in a bad situation. "It's hard to quantify, but there were risks to the taxpayer." That's Deputy Minister Imbrogno's quote.

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When the Auditor General was here to testify, he acknowledged that similar issues arose when he testified

in public accounts. He said he would be reluctant to put this type of information into the hands of the parties at that time. He also likened it to not wanting to tip your hand.

So is it safe to say that these kinds of concerns expressed by these three neutral individuals do mirror the concerns that you had as well?

**Mr. Chris Bentley:** Well, absolutely. I vaguely recall that at one point when the auditor was invited to take on the Oakville matter before it actually concluded, he indicated that he would wait. But you'll have the exact wording about that.

Look, there was a lot at stake here. I was trying to reconcile the right of committees in the Legislature to have the material that they request—that's an important right—and the money at stake for the people of Ontario. These two principles should not conflict. On this particular occasion, they appeared to come together in an unhelpful way. I know part of the effort throughout a number of months was to find a way where the people of Ontario could have both. They should have both; they need to have both. We need to find a way that they have both.

I very much regret we couldn't find a way at that time. I know a number of efforts were made through the House leader's office and others, and others can speak to the details. But there should be a way.

It was never a question of if the documents were going out; they were always going out. It was a question of when.

**Mr. Steven Del Duca:** So, given that we have a number of neutral individuals—the people I mentioned before and quoted from before—given the concerns that you had, given that there were a lot of people saying that there were potentially serious risks associated with the release of information according to a schedule—you said a second ago, it wasn't a question of if; it was a question of when, but given that there was a big, aggressive push to release this information, let's say perhaps prematurely, did it surprise you at all during this process that the opposition parties frankly seemed to have no regard for protecting the public interest?

**Mr. Chris Bentley:** I wouldn't say that. I think—and I've said this publicly before—I respect all members and I respect the duty that all members have. I respect the duty that we all have to work as hard as we can in whatever role we have to serve the people of Ontario. I happened to be in a position where I was trying to reconcile our obligations and duties as members, or as ministers, and what I understood to be the very real risk to Ontarians, if we had a public discussion about negotiations that, in fairness, I wasn't able to speak about in detail. That is a very challenging and frustrating situation. I wish, over the course of months, we could've had an approach where the people of Ontario should have both.

I understood during the course of estimates from some of the comments that were made by the Chair of the estimates committee that I, in fact, was acknowledged to



have a responsibility to speak up for the interests of Ontarians and to protect them.

I understood from the motion as it was worded that it was, if the Speaker made a ruling, that only if I did not disclose would I face subsequent sanctions.

I understood there were discussions going on, and my hope—not that I would ever want to be there again—is that there would be a way that Ontarians can have both. Because in some way, in all ways, they actually deserve both.

**Mr. Steven Del Duca:** So you mentioned during your appearance at estimates, you talked about some of the discussions or rulings that the Chair of the committee at that time had brought forward. So I want to talk a little bit about those.

On a number of occasions during those proceedings, Mr. Prue, the member from Beaches–East York, the estimates committee Chair, made comments such as the following: “It would appear to me that Mr. Leone has the right to ask the question, but it is also abundantly clear to me that the minister can, as part of his answer, invoke his privilege as to what is happening in the lawsuit, and that can be his answer....”

“So I would caution Mr. Leone—I’m going to allow him to continue, but I would caution him that the minister is well within the prerogative of his duties, if he feels it necessary to protect the government of Ontario’s position, to simply state so, and the line of questioning may not have the results you are hoping for, all right?” That’s the quote from estimates Chair Michael Prue. Did that give you a sense that the Chair was validating some of the concerns that you had?

**Mr. Chris Bentley:** I took from that comment, I took from the advice that I had received and I took from what I knew about the situation that there really was an interest that Ontarians needed protected; that I wasn’t able to speak in the type of detail that members wanted—far from it; that the financial interests of Ontarians were at risk, and it would have potentially cost them a seriously significantly greater amount of money. I took from that type of comment some support, that I was entitled to say what I was saying in response. Subsequent events may have shaken my confidence in that belief, but that’s what I took from that comment.

**Mr. Steven Del Duca:** In response to Mr. Leone’s document motion of May 16, 2012, again, the Chair of the committee, Mr. Prue, acknowledged the committee’s right to ask for the documentation, but then stated—and I’m going to quote him again because I think it is important:

“They have the right to ask for the documentation. The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions....”

“I would advise that I’m going to allow the motion to proceed, but I would also advise—and I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so.”

So again, not to belabour the point, but it surely must have seemed to you that the Chair was taking a similar approach to yours in terms of attempting to balance those competing interests that we’ve talked about today.

**Mr. Chris Bentley:** I took from the comments of the Chair, who was obviously in a challenging position, that I not only had certain rights, but obligations. We all have rights and we all have obligations.

I was attempting to the best of my ability to reconcile two very important principles: protecting the financial interests of the people of Ontario, which I honestly believed were at risk, given these lawsuits, sensitive negotiations which had not been going well in the arbitration; and the right of members to ask for what they want in the course of a committee proceeding. Those interests usually stand together. They almost invariably stand together. They need to stand together, but in this particular case, they seemed to come into some conflict. I was trying to find ways, and others were trying to find ways—others in particular—to reconcile those two at the time when I was doing what I believed to be right, and that was standing up for the financial interests.

**Mr. Steven Del Duca:** Is it fair to say that you were surprised or disappointed in terms of the course that things took during and following your appearance at estimates in terms of this matter being referred to the House?

**Mr. Chris Bentley:** Well, the whole proceeding has been very, very challenging and very difficult. There’s no question about that. It has been unlike anything I could ever have imagined, and it essentially sprang from my belief that I was acting in the interests of the people of the province of Ontario and the belief of other members that they needed to take certain steps, I gather in their belief, to protect those interests. It’s a very challenging situation. But throughout that period of time, the only reason I was doing what I was doing is because I honestly believed that the financial interests of Ontarians would be substantially worsened if we were to have the disclosure of material and the inevitable public discussion about where we were, where negotiations were, what our position was, what the risk was—all the details of the discussion, negotiation, the lawsuits in public at the same time we were at the table, trying very hard in these challenging situations to reach the best result.

Remember where we really started from with the cancellations. For me, the starting point with cancellations was: How big is the cheque that you have to write to the other side because you’re not proceeding with the contract? The whole goal of the negotiations was to limit the size of the cheque and to get them to take the right to produce power somewhere else in the province in a commercially reasonable deal.

Maybe not surprisingly, they weren’t going particularly well. We were bargaining hard, the OPA leading that, and they were bargaining hard, probably not particularly happy that the contracts that they had signed were not being proceeded with.

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**Mr. Steven Del Duca:** Okay. How am I doing for time, Chair?



**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Steven Del Duca:** I think I'll wrap up this portion here and come back with some other questions after the other two have had a chance. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the Conservative side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Again, welcome back, Mr. Bentley. It's nice to see you today.

The Auditor General was here last week and talked to us about the true cost of the Mississauga gas plant cancellation to be a net of \$275 million. Who would have instructed you to use the \$180-million and then \$190-million numbers?

**Mr. Chris Bentley:** Thank you very much, and if I could just have a minute—I won't make it too long.

**Mr. Victor Fedeli:** We've been through that law many times together.

**Mr. Chris Bentley:** First of all, I want to say that I've reviewed the auditor's report—enormous respect for the auditor—and I accept his accounting.

**Mr. Victor Fedeli:** You coming tonight to his do?

**Mr. Chris Bentley:** I accept his accounting.

Can I tell you where I—how we got to the number that we go to?

**Mr. Victor Fedeli:** Actually, he talked about the fact that he's not really sure how you came up with \$180 million. He knows where the \$190 million—the extra \$10 million was. But I'd rather just stick to the facts.

**Mr. Chris Bentley:** Let me start there, then. What we had, when we were able to conclude the agreement on July 9—I reported it on July 10, the day before the last day of estimates. I reported it—what I asked for were the costs. You'll remember there was a press conference. You were at it; I think Mr. Tabuns was at it. I reported the costs in two different baskets. The first basket: \$180 million was money spent by the government of Ontario, the people of Ontario, and the OPA for engineering, construction work and to the financier that could not be used for anything else. You can call them sunk costs; you can call it lost money. We added \$10 million to that later in the week.

The bottom: there was another \$85 million that we spoke about, a different basket of costs, you'll remember, monies that we spent for turbines, monies we spent for design and engineering. We did not include that in the \$180 million. We said that the reason they weren't included in the \$180 million is because we had used those in the course of the negotiations to reach a commercially reasonable agreement. It's where I started before. For me, the cost to cancellation was how big is the cheque that you pay today for nothing because you're not proceeding with the contract and—

**Mr. Victor Fedeli:** But the \$85 million was in the \$180 million.

**Mr. Chris Bentley:** No.

**Mr. Victor Fedeli:** You had \$85 million plus \$88 million plus \$7 million equals—

**Mr. Chris Bentley:** No, no. There are two—just let me finish this. I think there are two \$85 millions that you're talking about.

So how big is the cheque that you pay today and get no value for Ontarians; and can you negotiate, limit the size, get value in a commercially reasonable agreement for them to produce power somewhere else?

When we reported the costs, there were two baskets: \$180 million, costs thrown away; and underneath that, on the same sheet, \$85 million. In fact, your colleague Mr. Nicholls, I think on the last day of estimates, asked me about it. He said, "Now, if you hadn't been able to repurpose the \$85 million"—I'm paraphrasing; I'm sorry—"in the new agreement, in fact, the \$85 million would have been added to the \$180 million, so you'd come up with \$265 million." I said, "But we've been able to repurpose. We've been able to use it in the negotiations—one of many factors in the negotiations—to reach a commercially reasonable deal."

As I say, later in the week—you're right—we added \$10 million to that, and we spoke to the no-interest loan. So, for me, what I reported was the money we were out of, no value, plus a commercially reasonable deal, and we spoke to some of the terms of that.

**Mr. Victor Fedeli:** Why didn't you include the extra \$5 million for that side—one of the 10 side deals that the auditor presented to us?

**Mr. Chris Bentley:** Was that—is that—

**Mr. Victor Fedeli:** That's the NUG contract for power that we didn't need that got cancelled for which they kept the \$5.4 million. It was a payment to them.

**Mr. Chris Bentley:** Yes. Later on that week—the Keele Valley had not been included in the \$180 million. Later on that week, I think it was Mr. Andersen, the head of the OPA, who indicated that that should have been in the list. To be frank, and in fairness to him, when we concluded the agreement on the 9th, I wanted to get as much information about costs out as I could, because I knew we were coming back two days later, on the 11th, so when we reported it on the 10th, we had the list, but we didn't have that in there.

**Mr. Victor Fedeli:** I asked you about that many times in the Legislature, but I never did get a good answer—I never did get an answer from you on that. I asked about that \$5.4-million side deal. I brought it to the Legislature, I had three press conferences on it, but nobody ever acknowledged that there really was a side deal—one of 10, as a matter of fact, as it turns out. The auditor told us there were 10 side deals done. One was that \$5.4-million gift to the proponent.

**Mr. Chris Bentley:** Mr. Andersen spoke about that after the last day or during that last week of estimates. I think it was after the—I don't know if it was on the Wednesday or the Thursday—about the fact that that should have been included.

When you say the others were side deals—

**Mr. Victor Fedeli:** That's the auditor's language.

**Mr. Chris Bentley:** I understand. There were a number of interim agreements made between the OPA



and Greenfield, because what we were doing at the beginning—we had made a commitment to stop and, if possible, relocate, but just because you become the government and you say “Stop” doesn’t mean they actually have to stop. There are a few challenges there.

**Mr. Victor Fedeli:** I’m quite certain there were.

**Mr. Chris Bentley:** You can tell them to stop, and they don’t have to stop. You can rip up the contract, and they don’t have to stop. You could bring an injunction application, and you don’t necessarily win, and they don’t have to stop. And you can introduce a bill in the Legislature, with all the complexities.

**Mr. Victor Fedeli:** In your July 11 testimony at the committee—I’m going to just read you a sentence: “We have announced an agreement between the Ontario Power Authority and Greenfield South Power to relocate the Mississauga gas plant. It will now be known, I suspect, in our conversations as the Lambton gas plant. The bottom-line cost of relocation is \$180 million”—period. It doesn’t go on to talk about any other side deals, any other information. You’ve announced many, many, many times in the Legislature that the bottom line—in fact, you used to call it the total cost—was \$180 million. Do you change that today?

**Mr. Chris Bentley:** The auditor has been very clear.

**Mr. Victor Fedeli:** I know the auditor has been very, very clear. I was asking about you.

**Mr. Chris Bentley:** I accept the auditor’s accounting. He’s the expert; I’m not. But what I have told you is how we came up with the \$180 million.

**Mr. Victor Fedeli:** So the auditor—

**Mr. Chris Bentley:** If I could just finish just this little part.

**Mr. Victor Fedeli:** Yes, please.

**Mr. Chris Bentley:** On the very day we spoke about \$180 million, we did say that there were other costs spent by the OPA, the people of Ontario, totalling \$85 million, which were not in the \$180 million, but they were part of the negotiation to reach the new agreement.

**Mr. Victor Fedeli:** The auditor, several times, both in his speech, in questions from the media, here in this committee, he volunteered that the language changed from—the wording that you first used was “total cost” to the wording changed to “cost to taxpayer.” When was the decision made to change the language?

**Mr. Chris Bentley:** I heard about that and I read a reference to that. So when we announced the agreement at the press conference on the Tuesday and I spoke about the two baskets of costs, all of which were money that had been spent, the bottom \$85-million part of the negotiation to reach a commercially reasonable deal, there had been no discussion with the Minister of Finance or the government about where that money was going to be paid from, the allocation between taxpayers and ratepayers. They knew it was coming, but we hadn’t actually had the discussion.

**Mr. Victor Fedeli:** So—

**Mr. Chris Bentley:** If I could just finish. I might have been asked in estimates about that. About a week later—

and I don’t remember whether he was testifying before his estimates committee or just before that—the Minister of Finance came out and said that \$190 million is being paid by the taxpayers, and that’s how the \$190 million became—

**Mr. Victor Fedeli:** Let me wrap this end of it up by bringing out—you said that you heard about it in the testimony. I can repeat it to you. It was David Lindsay’s testimony. I read an email from Murray Segal from the justice department. He says: “Spoke to Lindsay who spoke to Wallace. Idea is that Bentley need refer to taxpayer vs ratepayer as in OPA letter. By referring to that issue and the chat with cab colleagues, he protects himself re: assumption of final risk without now going to tb.”

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I asked Mr. Lindsay if he knew what that meant and his answer was three words, “Unfortunately, I do.”

Do you want to talk about the difference of referring to “taxpayer” or “ratepayer”?

**Mr. Chris Bentley:** Can you tell me when that was?

**Mr. Victor Fedeli:** November 11, 2011.

**Mr. Chris Bentley:** In 2011. There was a letter about that time, that once—I sent a letter to the OPA asking them, pursuant to our commitment, to speak with Greenfield, get them to stop, and negotiate a relocation. The OPA sent a letter back in November, I think, saying, “Who’s going to pay for this?” I sent a letter back to them, essentially in response, which was, “We’ll have a conversation.” My point was that at the time I announced the agreement in July 2012, we hadn’t had the conversation, and actually I heard about the conversation when I heard about the minister’s announcement about the—

**Mr. Victor Fedeli:** Well, Mr. Lindsay’s testimony of “Unfortunately, I do” is pretty telling.

I just want to segue quickly to Oakville—

**Mr. Chris Bentley:** To be clear, there was no agreement at that time.

**Mr. Victor Fedeli:** On September 24, when you were announcing the costs, you said, “Over the coming days and weeks you will read and hear lots of numbers.... The only accurate cost to taxpayers for this relocation is \$40 million.”

Do you stand by that \$40-million cost as the total cost of relocating Oakville?

**Mr. Chris Bentley:** Two points: First, I presented that agreement, which, you’re right, was concluded on the 24th, in exactly the same way I presented the Mississauga relocation. In other words, the monies that had been paid out which were not part of any renegotiated commercially reasonable deal, in that case, were much smaller; they were \$40 million. We had a commercially reasonable deal negotiated by the parties and the OPA. We did mention that there was \$210 million, I think, that the OPA was paying as part of this. Again—

**Mr. Victor Fedeli:** I’m not sure you mentioned it. We found that in the documents. I’m not quite certain that that was mentioned back then.

**Mr. Chris Bentley:** I thought it was in one of the early news reports.



**Mr. Victor Fedeli:** What I have is the documents from September 24, October 2, October 3. Day after day after day: The cost of it is \$40 million.

**Mr. Chris Bentley:** And if I could just conclude that—

**Mr. Victor Fedeli:** The Oakville case is \$40 million.

**Mr. Chris Bentley:** And if I could just conclude that: I presented it in exactly the same way. The out-of-pockets that were turned into no value were the \$40 million. The rest was a commercially reasonable deal. Remember, the whole goal here—

**Mr. Victor Fedeli:** But that's not what was said. It was that the total cost is \$40 million: "The only accurate cost to taxpayers for this relocation is \$40 million." Was it the cute word with taxpayer versus ratepayer again?

**Mr. Chris Bentley:** No, sir. What you had through the negotiations, fortunately, was a commercially reasonable deal delivering benefit to the people of Ontario for TransCanada to deliver power—different place, different terms of the agreement, but same megawatts. So we've been able to take—

**Mr. Victor Fedeli:** But that's a lot of work when you're asked the question and you say, "The only accurate cost to taxpayers for this relocation is \$40 million."

**Mr. Chris Bentley:** And the rest is being delivered over a period of 20 years through the agreement.

**Mr. Victor Fedeli:** I don't see that in that quote from September 24. I see it as being pretty definitive.

**Mr. Chris Bentley:** Meaning the agreement is for 20 years, negotiated in a commercially reasonable—

**Mr. Victor Fedeli:** Hindsight is so—we're lucky to have it. I have to tell you that.

**Mr. Chris Bentley:** But let me be clear about this. The auditor has taken a different approach than the one that we used to present Mississauga—

**Mr. Victor Fedeli:** Yes, he actually includes everything.

**Mr. Chris Bentley:** If he takes a different approach to Oakville, then he will come up with a different number, and it will be a higher number.

**Mr. Victor Fedeli:** So let me ask you: what was the total cost of the cancellation of the Mississauga power plant—period, the total cost.

**Mr. Chris Bentley:** Well, the auditor has spoken to that, right?

**Mr. Victor Fedeli:** And so you acknowledge that number?

**Mr. Chris Bentley:** The auditor is the expert on accounting, not me.

**Mr. Victor Fedeli:** So what's the total cost of the Oakville gas plant cancellation?

**Mr. Chris Bentley:** The auditor will provide you with it—

**Mr. Victor Fedeli:** But I'm asking you. You were the Minister of Energy. You signed off on these things.

**Mr. Chris Bentley:** The auditor will provide you with the number. As you heard, our approach was to take the big cheque we'd have to pay TransCanada for ripping up

the contract, negotiate it—limit it so that, at the end, we came up with the out-of-pockets that were of no value—

**Mr. Victor Fedeli:** It was a pretty simple question, though. Like, quite seriously—

**Mr. Chris Bentley:** —the out-of-pockets that were of no value in a commercially reasonable agreement. That's why it took so long—

**Mr. Victor Fedeli:** So I asked you the price of Mississauga, and you agree with the auditor, \$275 million. I ask you the price of Oakville, but it's a long, long sentence. Just what is the price of the gas plant cancellation in Oakville? There's a number. You were the Minister of Energy. What's the number?

**Mr. Chris Bentley:** And the auditor's going to give us that number.

**Mr. Victor Fedeli:** You can't tell us how much it was when you signed off as Minister of Energy?

**Mr. Chris Bentley:** I have told you how we thought of and presented the agreement. We did not go and—

**Mr. Victor Fedeli:** So you're sticking to the \$40 million?

**Mr. Chris Bentley:** No. I'm deferring to the auditor. We did not go and compare the relocated agreement to the original agreement in Mississauga.

**Mr. Victor Fedeli:** So I want to talk about the documents, then. We've talked about Mississauga. We've talked about Oakville. I want to talk about the documents.

I'm going to take a minute to read you a couple of snippets from Kristin Jenkins, who was here. This is her opening statement, so you would have seen that. This is a two-hour meeting with Ms. Kulendran. "She told us that the ministry was using a strict interpretation of the wording of the estimates committee motion and that this had been discussed.... She then told us how the ministry was specifically reviewing its documents to comply with the motion."

She told us that the documents "responsive to the estimates committee's motion" needed to be—and then she went on with the ones. But here's the ones she said we can't consider: "If not mentioned in the correspondence, the correspondence and any attachments were to be excluded, and SWGTA was not to be considered a proxy for Oakville."

Applying the ministry's approach had the effect of excluding relevant documents, as well as correspondence that only included the words "SWGTA." She went on to say that "Given that Ms. Kulendran had told us that this was the ministry's approach.... we resubmitted the documents" after they pulled between 4,000 and 6,000 documents out. However, they then learned that this was not what the ministry was going to be using. So, in effect, the OPA was asked—she claims the OPA was asked by the ministry to remove 6,000 documents that "may not have been responsive." How do you feel about that, her telling us that?

**Mr. Chris Bentley:** Well, let's be clear what my position and direction were from the beginning. My position and direction were that we had to be responsive



to the motion, provide the committee what you asked for—

**Mr. Victor Fedeli:** So you agree with taking out the documents, the SWGTA, because it could be—

**Mr. Chris Bentley:** No. I think it's important that I actually finish this part—that the ministry prepared the documents. They did the search. They decided what would be searched. I had nothing to do with any instructions to any member of the ministry; nor to the OPA; nor to Ms. Kulendran. My position throughout was, “Give the committee what they asked for, and be ready”—

**Mr. Victor Fedeli:** So who do you think told her that?

**Mr. Chris Bentley:** —“to go when the Speaker makes his ruling.”

**Mr. Victor Fedeli:** Who do you think told her to take those 6,000 documents out?

**Mr. Chris Bentley:** I'm not going to speculate because I had nothing to do with—

**Mr. Victor Fedeli:** Again, you're the minister. This is your ministry. She worked in the ministry and ordered the OPA to remove 6,000 documents. Now, subsequently the OPA had either a guilt pang or whatever, but they ended up putting the 6,000 back in—the second document dump. But in the first document dump, they were not there. So you're telling us that you did not direct the OPA to remove 6,000 documents?

**Mr. Chris Bentley:** Of course not.

**Mr. Victor Fedeli:** It wasn't you?

**Mr. Chris Bentley:** Of course not.

**Mr. Victor Fedeli:** Okay.

**Mr. Chris Bentley:** And it's interesting that in your earlier preamble you said that the ministry wasn't following that approach.

**Mr. Victor Fedeli:** Yes, that's what she said. She said—

**Mr. Chris Bentley:** I don't understand any of it.

**Mr. Victor Fedeli:** Well, she was told that the ministry's guidelines were one thing, but as it turns out in the end, it said—“Colin Andersen told me and Mike Lyle that the approach that Ms. Kulendran had told us to use was not in fact what the ministry had been using” and that in fact got Colin Andersen to reconfirm, and they went ahead and put those 6,000 documents back in, which is why we had the second document dump. That's what she's claiming here in her opening statement that she swore under oath.

**Mr. Chris Bentley:** What is very unfortunate is that they didn't all go out the first time.

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**Mr. Victor Fedeli:** I'm sorry?

**Mr. Chris Bentley:** What is very unfortunate is that they didn't all go out the first time.

**Mr. Victor Fedeli:** Well, I think we all feel the same way, and I'm glad you acknowledge that they weren't in the first document dump.

There's one document between you and—actually, it's one of the ones that was redacted. Do you know anything about the redacted documents?

**Mr. Chris Bentley:** Apart from the fact that—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Bentley. You've already been asked the total cost to Ontarians to cancel the Oakville gas plant. When you were given the MOU to sign with TransCanada, were you briefed on what this whole exercise would cost Ontarians?

**Mr. Chris Bentley:** No. I had a briefing about the memorandum of agreement that was about to be reached—subsequently reached—and that there were a number of elements to it. It was the part of a long, very difficult negotiation. In the course of the negotiation, there were good things for Ontario and the people of Ontario, meaning we got a benefit, and there were other things where the other side got what they wanted. But at the end of the day, we had a commercially reasonable agreement. I keep coming back to that end—

**Mr. Peter Tabuns:** Were—

**Mr. Chris Bentley:** I'll just finish this. For example, there was a lower net revenue requirement, but as the agreement states, there was the payment of turbines—about \$210 million—and there were other costs in there, a number of which hadn't yet been calculated but they would be going back and forth—but we had a commercially reasonable memorandum of agreement that was put up online. The payment, out of pocket, for Ontarians was the \$40 million that had—it was turned into no value because they were effectively costs you couldn't turn into any value in the negotiations.

**Mr. Peter Tabuns:** So, you were not told the total amount of money that was at risk or that the people of Ontario would be stuck with? Is that what you're saying to us?

**Mr. Chris Bentley:** There wasn't an expression in that sense. What we had throughout the negotiations—if I could, just for a minute—we started with the big cheque you pay today for no value whatsoever to TransCanada. There are a number of guesstimates as to what that might have been. Fortunately, we never got there. The whole goal of the negotiations was to limit the size of that cheque by having a negotiation to get the other side to agree to produce power at a different place, but not just any agreement—because we could have done that in a week—but on a commercially reasonable basis that delivered a benefit for Ontarians.

Now, you're right; that was a tough negotiation. They got some good things and they had some risks. It was a tough negotiation, but at the end of the day, my direction to the OPA is, “You can only reach an agreement if it's a commercially reasonable one and it's publicly defensible. You deliver a benefit to Ontario, to the system.” That's where we ended up.

**Mr. Peter Tabuns:** Mr. Bentley, who briefed you on the value of the MOU, the costs?

**Mr. Chris Bentley:** The terms of the MOU—I had briefings—I think it was the Friday before, and Mr. Andersen was there, along with a number of others—about the fact that we were approaching an MOU which would have a number of terms. I think on the Monday



morning that we had reached an MOU with a number of terms, that the out-of-pockets were \$40 million, that there were benefits in this MOU—good things for Ontario—but there were risks the other side had taken. So it was a back-and-forth negotiation, but you had an MOU that delivered power—would deliver power for 20 years of system benefit.

**Mr. Peter Tabuns:** So no one told you what the numbers were, and you didn't ask?

**Mr. Chris Bentley:** We had a discussion about the fact, and I knew about the fact that there had been a long give-and-take. So there were lots of discussions about the turbines, about what you do with the turbines, whether they can use the turbines in the new one—

**Mr. Peter Tabuns:** That's not what I'm asking you. I'm trying to understand that you signed off on a document worth hundreds of millions of dollars, and you can't tell me what obligations Ontario was taking on. Possibly, you didn't ask, but you are beating around the bush pretty heavily. Why don't you tell me? Were you told the value of the reduction in the monthly contract—

**Mr. Chris Bentley:** Yes.

**Mr. Peter Tabuns:** Okay, and were you told the net present value for that?

**Mr. Chris Bentley:** No.

**Mr. Peter Tabuns:** And didn't ask—

**Mr. Chris Bentley:** Sorry. The next present value in—the reduction in the contract is—

**Mr. Peter Tabuns:** The payment per megawatt of capacity per month.

**Mr. Chris Bentley:** Yeah. That was just a face value; that's not net present valued. But—

**Mr. Peter Tabuns:** And were you not told the net present value?

**Mr. Chris Bentley:** But—just give me a few seconds to actually answer your question.

**Mr. Peter Tabuns:** A few seconds, sure.

**Mr. Chris Bentley:** You raise the issue of the reduction in the net present value. The new contract: same number of megawatts, 975, but it will start later. So, of course, one of the issues to deal with is that the stream of payments they're getting is worth less—not worthless—worth less because of the effect of inflation.

**Mr. Peter Tabuns:** No, I hear you very clearly.

**Mr. Chris Bentley:** Let me just finish for about 30 more seconds.

There's the effect of inflation on the construction. There is the cost of the turbines. That's something that we bear. There were other issues about hooking up and being able to deliver the gas. I rely on the experts at the table to give me a review and to tell me at the end of the day if we have a commercially reasonable and defensible contract, and the answer is yes. They didn't have all the numbers—they still don't, I don't believe, have all the numbers—but they could say, on the basis of the back-and-forth negotiation, that we have a commercially reasonable agreement, and that's the basis on which we were able to proceed, because I wouldn't sign it unless we did.

**Mr. Peter Tabuns:** So you signed without being told the numbers and the scale of risk; that's what you're telling me. You don't have a number to give me.

**Mr. Chris Bentley:** I don't, and they still don't have a number with respect to some of the issues, like the one you've been talking about, the gas management cost.

**Mr. Peter Tabuns:** So we're still at \$40 million, in your mind?

**Mr. Chris Bentley:** No, we're not. There's a different approach and a different characterization to the cost of the cancellation. Now, my approach, the approach that we used, is not accepted by the auditor; he uses a different one. I accept that, but what we were starting from was, how big a cheque do we pay today for no value, how do you limit that cheque, and the way you limit is to see if you can get the other side to agree to a long-term power agreement on a commercially reasonable basis. And into that agreement are lots of back-and-forths, but as long as it's commercially reasonable in the eyes of the OPA and our negotiators, that's our guarantee that we've got something of value that you can rely on.

**Mr. Peter Tabuns:** I have to tell you—I'm going on to another question, but your response is completely evasive.

You were minister at the time the Mississauga gas plant issue was settled. Were you briefed on all of the costs?

**Mr. Chris Bentley:** The costs that I had were the costs that I presented in the summary sheet—

**Mr. Peter Tabuns:** This one?

**Mr. Chris Bentley:** That one—and the Keele Valley matter that was spoken about later in the week, and the fact that there was a no-interest loan for a period of time. And that's what I knew. I knew that we would step in and assist with financing if that was an issue. I knew that there was going to be the sale of land on a commercially reasonable basis, but the number had not been determined. I knew about the Mississauga site-specific costs yet to be finalized, so I didn't know what they were. But this really is what I got, and that's what we were speaking about, and I knew they—

**Mr. Peter Tabuns:** Who gave you this backgrounder? Who wrote this?

**Mr. Chris Bentley:** Well, we prepared the backgrounder on the basis of information, people in my office.

**Mr. Peter Tabuns:** Who is "we" when you say "we prepared this"?

**Mr. Chris Bentley:** My office, on the basis of information we got from the OPA about what the different costs were.

**Mr. Peter Tabuns:** And the OPA, according to the Auditor General, had already spent \$245 million by the time you made your announcement, so—

**Mr. Chris Bentley:** Well, with respect, if you actually add up the costs on this page, you've got \$180 million at the top and \$85 million at the bottom, so I'm at \$265 million. If you add \$10 million for the Keele Valley later in the week, that's \$275 million, and if you add in what—



ever factor you want to give with respect to the no-interest loan, you're over \$275 million. So, although the approach that we took was different than the auditor's, we stood up on day one and said, "Here's \$265 million worth of money we spent on this."

**Mr. Peter Tabuns:** So why did you say it was only \$180 million?

**Mr. Chris Bentley:** For the reasons I told you: that we'd been able to repurpose \$85 million in a negotiation to reach a commercially reasonable agreement. The auditor doesn't accept that approach, I understand, but at least you know that on day one—well, day two; the agreement was the day before—we were talking about \$265 million worth of money the people of Ontario had spent, \$85 million of which we had a different characterization for because it was part of this back-and-forth negotiation in reaching a commercially reasonable deal.

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**Mr. Peter Tabuns:** Well, the auditor says that what you got in terms of price reduction on the operations of that plant—the net present value is around \$20 million. So you spent \$80 million and you got \$20 million back.

When you were telling us "\$180 million," it was way off the mark. Why weren't you bringing those risks to our attention? We were getting stories about "bottom line," "no more than," and we had to press hard to get up to the \$190-million figure admission. Why were we not getting the whole truth from you at that point?

**Mr. Chris Bentley:** You always get the whole truth from me. That week what you had in your hand at the press conference was \$265 million worth of money out the door—our approach to how we presented the cost. The auditor, in his very thorough analysis, takes an entirely different approach. He adds up all the costs. He gives benefits for, yes, the net revenue requirement and the fact that there won't be power coming in at a time when we've got surplus baseload. He adds in a cost for the differential cost for sending the power from a generating station in Mississauga, which was not one that was part of any discussion that I remember. And there were a number of back-and-forths, as you see in the audit report, between the auditor and the OPA. But just as far as a suggestion that I was talking about \$180 million and there was \$240 million spent: Well, in fact, on day one, I've got \$265 million up in the window and by the end of the week we added \$10 million to that and a no-interest loan.

**Mr. Peter Tabuns:** And you kept saying it was 180 million bucks.

**Mr. Chris Bentley:** Because we took a different approach to this.

**Mr. Peter Tabuns:** Well, I'll point out one different approach. In your sheet here, you show \$88 million paid to EIG. The auditor said that it's \$149.6 million. That's a fair chunk. Where—

**Mr. Chris Bentley:** If you would just go to the bottom of the sheet, you'll see \$61 million was repaid to EIG in loan principal. It's already reflected in the dollar figures outlined above because some of it was spent on

materials and equipment that can be repurposed, while some of it was spent on materials that can't be. In other words, that's the principal that came in, not the penalties, and that's already reflected in the other figures.

**Mr. Peter Tabuns:** Yes, it doesn't reflect the penalties. It was \$149 million that was paid out—

**Mr. Chris Bentley:** No, the \$88 million is the penalty—the \$88 million was the settlement of the lawsuit in addition to repayment of the principal. I think it's important to note that what happened with the lawsuits that were going on at the time the estimates committee was asking for information—EIG sued in Canada and the US.

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** EIG brought a motion. We were supposed to win the motion, but EIG won the motion. So they were about five days away from taking over Greenfield and pursuing very substantial lawsuits in the States and in Canada. We got a negotiator down there who got them to hold off and negotiated a settlement, which was the \$88 million in penalties and the \$61 million or so in repayment. We dealt with that issue and then were able to reach a conclusion in Mississauga, for which a lot of money was paid up front—\$180 million or \$190 million, whatever figure you take, is a lot of money—but we also got a—

**Mr. Peter Tabuns:** It was \$245 million, actually, I'd say, from what the auditor told us.

**Mr. Chris Bentley:** But also it resulted in a commercially reasonable agreement. But you know, on day one—and I think you asked me questions about this as well on the last day of estimates.

**Mr. Peter Tabuns:** I probably did.

**Mr. Chris Bentley:** On day one, we got the numbers in front of you. If the auditor takes a different approach, I'm with the auditor. I'll always be with the auditors when they're doing what they're doing—always. But we did have the numbers in the window.

**Mr. Peter Tabuns:** And you were saying "\$180 million" to the Legislature, to the media and to any person who would come and ask. You would not admit the full figure. Did you note that EIG was charging 60% interest?

**Mr. Chris Bentley:** I didn't know what the terms were—

**Mr. Peter Tabuns:** It was 14% compounded quarterly. They were just inside the Criminal Code in terms of their amount.

**Mr. Chris Bentley:** And the lawyers took a look at that. I think one of the challenges when you stop a contract and effectively put an end to it is that you really take the other party and the contract as you find it. This was a tough one to take in many respects, but we dealt with that.

**Mr. Peter Tabuns:** Did you ever point out to the Premier, who was saying that this was \$180 million, \$190 million, that in fact it was \$245 million, in fact it was closer to \$260 million, \$270 million?

**Mr. Chris Bentley:** Well, I think, to be fair, I suspect that the Premier had access to the cost information that



we were using in the approach that we were taking—the then Premier, sorry.

**Mr. Peter Tabuns:** In response to an earlier question, you noted that the ministry provided documents and the OPA provided documents, but if you remember, the order was also that the minister's office provide documents, and your office didn't provide a single document. I assume there were computers. I assume there were file cabinets. Didn't you find it odd that not one document came from any of your staff on this matter?

**Mr. Chris Bentley:** My instructions were to provide what was asked for, to provide the documents responsive to the motion.

**Mr. Peter Tabuns:** You note the documents responsive were ministers, ministry, and the Ontario Power Authority. Not a single scrap came from the minister's office. I assume that your people were literate and were able to use a keyboard.

**Mr. Chris Bentley:** I understand that the appropriate searches of the staff computers and mine were done. Speaking only for myself, I do most of my business in person. I do most of it in meetings. I do, at best or at worst, by phone. Whenever you go to a meeting at the ministry, there are lots of people there. They keep copies of the records. They keep copies of the files. When I sent some of those letters that I referred to in the fall of 2011, I get a draft from the ministry, I sign it, and they send it out. My direction throughout was, "Give the committee what they ask for. Give them the documents that are responsive to the motion."

**Mr. Peter Tabuns:** You're aware that your former chief of staff, Craig MacLennan, deleted every email he had?

**Mr. Chris Bentley:** I'm aware now. I wasn't managing my staff's email accounts. That's not something that I did.

**Mr. Peter Tabuns:** No, I assume you weren't.

**Mr. Chris Bentley:** No, it's not something that I did.

**Mr. Peter Tabuns:** Was there anyone in your office who was responsible for seeing that your staff operated within the laws of Ontario with regard to records?

**Mr. Chris Bentley:** I always assumed that we were doing what the practice was, but I was not managing their accounts.

**Mr. Peter Tabuns:** Did you ever get emails from any of them?

**Mr. Chris Bentley:** Did I get emails from any of them?

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** Not on my ministry computer, no. I have a BlackBerry from my constituency, and from time to time I got emails there. Most of my work was done by phone, in person or in meetings.

**Mr. Peter Tabuns:** And did you have any sense, then, that your staff were destroying records as we went through this period?

**Mr. Chris Bentley:** No.

**Mr. Peter Tabuns:** How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Peter Tabuns:** Two minutes. I'm going to go back to Oakville. The TransCanada deal puts us on the hook for about \$400 million worth of gas management costs, according to the testimony of JoAnne Butler, who was here. That's a big chunk of cash. In fact, the reduction in monthly payments to TransCanada just kind of covers the cost of turbines, but it certainly doesn't address that. Did you not ever ask your staff or the OPA, "What is the value of the changes that we are being presented with in all this?"

**Mr. Chris Bentley:** A multi-part question: I thought our evidence was that they hadn't yet determined the cost. There was a range of \$300 million to \$475 million, but I'm sure—

**Mr. Peter Tabuns:** It was a range. That's correct.

**Mr. Chris Bentley:** I'm sure her evidence will come in at some point with an exact figure.

As I said before, there was a very complex negotiation. There were lots of figures back and forth. The direction that I had was, can we reduce the big cheque with a commercially reasonable and acceptable agreement? There were a lot of things back and forth in that—a lot. The gas management charges that you talked about is one that I've learned more and more about afterwards, but there were lots of back-and-forths. Although you're dealing with the same megawatts, you've got a different location, a different period of time, different construction costs, different risks on the part of TransCanada, different market opportunities—all sorts of different factors back and forth that they have to consider as opposed to just taking the cheque. So at the end of the day, there was a memorandum posted online—something that your party has often asked for, that we post these things—

**Mr. Peter Tabuns:** Yes, I looked at it today.

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**Mr. Chris Bentley:** And, if I could say, you were right—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Mr. Del Duca, 10 minutes.

**Mr. Steven Del Duca:** I want to begin by talking a little bit about the concept of document disclosure. Actually, I'd like to try and clarify something that came up in questioning a little bit earlier today from Mr. Fedeli. There was a discussion around Kristin Jenkins and allegations about the OPA's document search. I just wanted to say to you, Mr. Bentley, and for the record that those allegations were actually investigated by Secretary Wallace, and he found no evidence of wrongdoing. In fact, Deputy Imbrogno said he believed Ms. Kulendran's account of what happened.

Just so it's clear, under oath here at committee, Ms. Kulendran did say the following:

"I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents.

"The conversation on August 22 was about sharing observations that had been made through the minister's office's review of the documents, but it was not to provide any direction."



I just thought it was important to make sure that that was completely clarified.

With respect to the document disclosure, as I mentioned, the secretary of cabinet was here to testify, and he spoke about the scope of the production motion passed at the estimates committee in May 2012, and some of the difficulties that it presented with respect to compliance. Did you have any discussions with your deputy about the challenges of conducting such a large-scale search?

**Mr. Chris Bentley:** Well, I heard about the challenges of conducting a large-scale search from time to time. I wasn't involved in it. I've told you what my direction was and my position was. The ministry was conducting this. It was a massive undertaking, and it consumed, I understand, a lot of time from a lot of people over many months. Others said, from time to time, it was by far the largest that they had ever been involved in. It would be fair to say that, in my career, it was by many times the largest by many times, probably by hundreds of times, that I'd ever been involved in.

I've heard from time to time, from people where this type of document disclosure is done all the time, in the litigation field—civil litigation wasn't my field, but we often have a situation. Not to excuse it, but you often have a situation where you have an initial disclosure and a continuing disclosure.

**Mr. Steven Del Duca:** Right.

**Mr. Chris Bentley:** In fact, in the work that I did as a defence counsel, we were continually getting disclosure. It was one of the obligations, actually, that there would always be disclosure. The question was often not whether there would be more disclosure coming; the real question was, how late in the process would it actually come? So this was, I think, in the view of just about everyone, by far the largest anybody had ever seen.

I think, to be fair, a lot of people worked really hard in the ministry—and, I'm sure, at the OPA—to get it right. Boy—I think the secretary said that mistakes have been made, and that's clear, but I think best efforts were always being made. A lot of good, hard work was done. I'm sure they learned a lot; I'm sure we've all learned a lot. Gosh, I'm sure I've learned a lot, but they worked hard to get it done.

**Mr. Steven Del Duca:** And you believe that the ministry and the OPA acted in good faith?

**Mr. Chris Bentley:** Oh, always, always. I think both the ministry and the OPA were acting in good faith. I think they were putting a lot of work into it. It consumes a huge amount of time, and we're not a big ministry. We don't have thousands of employees. Not to excuse it, but David Lindsay, my former deputy, used to say something like, "We're small but mighty," and "small" might be the emphasis in this particular case—around less than 200 people who are managing the files which from day to day pop up in the Ministry of Energy, and there's always something happening in the Ministry of Energy.

**Mr. Steven Del Duca:** I want to talk a little bit about willing hosts. It seems to me that one of the things that has been a little bit lost in this entire discussion over the

last number of weeks here at committee is the positive impact on the communities where the plants will now be built. I'm wondering if you can briefly tell us a little bit about the reaction of those communities when the new sites were announced.

**Mr. Chris Bentley:** Certainly. And you're absolutely right: It was essential in this negotiation not just to get the financial terms right—that was crucial—but also to find a place that would actually take the plant. That seemed to have been a challenge in Mississauga and Oakville, and as we found—well, it seemed to have been a challenge.

We were able to reach an agreement for the transfer, the relocation, of Mississauga to Lambton. I spoke to Steve Arnold, who at the time was the warden as well as municipal official for that particular area, and he was delighted. He was absolutely delighted.

The OPG site, the Ontario Power Generation site, in Lambton has been generating power through a coal-fired facility for decades. They're concerned about the future of the coal-fired facility. They had a site. It was large enough. They're used to power; they're used to power generation. They were delighted. It was going to mean employment, long-term employment but also short-term construction employment.

I know there are some other sites in the area that Greenfield might be looking at, but certainly the fact that it was going there was great.

The relocation of Oakville—again, enormously challenging to find a site that would accept it, that you knew would likely accept it. When I phoned the municipal official—and I'm embarrassed; I don't remember his name right now. When I phoned him to tell him that we'd reached this agreement, he was very pleased—very pleased about the employment prospects. They'd had the Lennox facility there in eastern Ontario for many years. I think it's a 2,000-megawatt facility, gas- and oil-fired, and they've had that for decades. They have the employment, the community is used to it, so they were pleased. He was interested in how many more jobs were coming, so they were interested in the long-term jobs. They were also interested in the effect of construction activity in their particular area.

We might have spoken, in the different press releases about the agreements, about how many jobs were involved—several hundred, I thought, for each, of construction activity jobs.

**Mr. Steven Del Duca:** Thank you very much. I only have a couple of questions left, and I want to talk just a little bit about personal impact, and particularly the personal impact that all of this has had on you and has had on your family. I'm quite sure that it has been extremely difficult. We all know that you're an extremely well-respected litigator. You're a former Attorney General of this province. You've served, as I said at the outset, with distinction for many, many years. So I can only imagine that to hear members of the opposition raising the spectre repeatedly of jail time or law society proceedings against you—I can only assume that it has



been a very difficult experience for you and for your family. Can you elaborate a little bit about that?

**Mr. Chris Bentley:** You know, in all of the roles I've had, representing people, I've always tried to do the best I could. I've always acted in good faith, and I've stood up for them—not always with popular causes, but I always stood up for the people that I represent.

When you're a criminal defence counsel for several decades, you're not representing the most popular of causes—let's be clear. But I think it would be fair to say that this past year has been one of the most difficult I could ever imagine.

The sacrifices that families make in public life are enormous, far beyond what most people would even begin to think, but the sacrifice and effect that my family has had over the past year has been incredible. I'm sorry that I put them through that by effectively doing what I always wanted to do, which was to serve the people.

**Mr. Steven Del Duca:** Thank you. I guess at this point I would simply ask if you have anything else that you want to add.

**Mr. Chris Bentley:** No. Thank you very much.

**Mr. Steven Del Duca:** Thank you for being here today, and thank you for all of your service to the province of Ontario.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the PC side: 10 minutes, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. So, Clerk, the documents—document 1, PC doc 1.

While the Clerk is handing that document out, let me talk a little bit about the role of cabinet in all of this. When would you have gone to cabinet to discuss both the Oakville and the Mississauga deals that were negotiated?

**Mr. Chris Bentley:** Thank you very much.

**Mr. Victor Fedeli:** We'll get to that document shortly. I just want to talk about September, when deals were announced.

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**Mr. Chris Bentley:** Mr. Chair, in answering the question, I'll get the direction and the assistance if the questions go into cabinet discussions, because I don't think I can actually talk about those.

With respect to Oakville, I was aware that we made the announcement in October 2010. Obviously, there was general discussion about the community and about the member. My next direct recollection is that I was involved in the decision where the TransCanada matter was referred to arbitration.

**Mr. Victor Fedeli:** So we're back in July 2011. You weren't the energy minister then, but you were in cabinet.

**Mr. Chris Bentley:** That's right. I believe that was the date. It was around that date.

**Mr. Victor Fedeli:** That segues into the document that I sent you.

**Mr. Chris Bentley:** Is this number 1?

**Mr. Victor Fedeli:** This is number 1, PC doc 1.

**Mr. Chris Bentley:** There you go: You have my signature.

**Mr. Victor Fedeli:** I have your signature and Kathleen Wynne's signature and a few other signatures.

This came to cabinet. In the documents we received, in the second document tranche, they call this the "vapour minute."

**Mr. Chris Bentley:** I tended to refer to them as Oakville and Mississauga.

**Mr. Victor Fedeli:** I appreciate that. Thank you. That's kind of how I do as well.

Were there any financial numbers discussed with cabinet with respect to TransCanada? Was there any upside number given by cabinet, approval to go out and negotiate a deal?

**Mr. Chris Bentley:** I may be wrong, but my recollection is that the July 29 document was a walk-around.

**Mr. Victor Fedeli:** Was the then Premier aware of this?

**Mr. Chris Bentley:** I won't speak for the then Premier. I'm sure—

**Mr. Victor Fedeli:** Would he have been involved in the cabinet or the walk-around, or would he have authorized this walk-around?

**Mr. Chris Bentley:** My recollection is that mine was the first signature on the page on the walk-around. I was aware generally—not specifically, but generally—that there were efforts made with respect to TransCanada to get the discussions in some sort of frame, because generally speaking, there were threatened lawsuits. My deputy, Murray Segal, I believe was involved at the time in a number of different discussions. I understood that the joint decision to refer it off to arbitration was as a result of that.

**Mr. Victor Fedeli:** Virtually every person who has testified says that these cancellations, both of Oakville and of Mississauga, were political decisions. What instructions would Premier McGuinty have provided anybody? During cabinet meetings, or when you became the minister, were there any upside financial numbers given to you? If the Premier was the one who ordered the cancellation of Oakville, what numbers would have been discussed or bandied about?

**Mr. Chris Bentley:** Well, I never heard numbers from—

**Mr. Victor Fedeli:** Okay. So there were no numbers. There was no upside limit.

**Mr. Chris Bentley:** I took my role, when I became the Minister of Energy and I had one cancelled contract and had another that was about to be cancelled—to take that big cheque, however big that cheque is that you're going to have to pay, and make it as small as possible and, if you can, negotiate a commercially reasonable deal. And you're right: There was a lot riding on those decisions.

**Mr. Victor Fedeli:** When you became minister, I presume the OPA briefed you on the costs.

**Mr. Chris Bentley:** The OPA would have briefed me on the state of the negotiations, which at the time—with respect, which one are we talking about?

**Mr. Victor Fedeli:** Both. You became the minister, and both were—

**Mr. Chris Bentley:** If I could, the first order of business was, they're still building Mississauga. That's not what we'd like to have happen. How do we stop the building? And then how do we have negotiations with Greenfield about (a) stopping the building and (b) relocating the plant? So those were the first several weeks, and I spoke about that—

**Mr. Victor Fedeli:** So what numbers would they have given you? Were there any scope, any financial numbers attached to either?

**Mr. Chris Bentley:** If I could, there was a—

**Mr. Victor Fedeli:** Well, sadly, we don't have much time—

**Mr. Chris Bentley:** Sorry, okay.

**Mr. Victor Fedeli:** —so we've just got to get to the answers.

**Mr. Chris Bentley:** I didn't have exact numbers, but at one point, I had to call the Minister of Finance to let him know about the OPA letter, which was early November—November 10, 11; I can't remember—of 2011, where they were asking, "Who's going to pay?" I said, "A very rough estimate of risk here is \$200 million to \$500 million."

**Mr. Victor Fedeli:** On which plant?

**Mr. Chris Bentley:** That's on the Mississauga.

**Mr. Victor Fedeli:** So \$200 million to \$500 million was the known number? That's the first time we've heard that.

**Mr. Chris Bentley:** Well, not a known number—

**Mr. Victor Fedeli:** It was your estimate.

**Mr. Chris Bentley:** It's not my estimate; it's an estimate I got—

**Mr. Victor Fedeli:** From?

**Mr. Chris Bentley:** It turned out—

**Mr. Victor Fedeli:** From the OPA?

**Mr. Chris Bentley:** From the ministry. I assume they—

**Mr. Victor Fedeli:** From the ministry.

**Mr. Chris Bentley:** —got it through the OPA.

**Mr. Victor Fedeli:** So \$200 million to \$500 million. And what about Oakville?

**Mr. Chris Bentley:** But that turned out to be very, very, very rough.

**Mr. Victor Fedeli:** What about Oakville?

**Mr. Chris Bentley:** I didn't have an estimate about that. I could—

**Mr. Victor Fedeli:** When you were doing—

**Mr. Chris Bentley:** You can sort of—

**Mr. Victor Fedeli:** When you were doing the deal for Oakville, you didn't have an idea of what this thing would cost?

**Mr. Chris Bentley:** You asked when I started.

**Mr. Victor Fedeli:** Yes, so—

**Mr. Chris Bentley:** The 20-year contract was for about \$4 billion worth of payments over time, if my math is right. When you stop a contract like that, it doesn't take long to figure out that the number is pretty big.

When you figure that, as I subsequently learned, they're going to have turbines, which I learned later on were \$200 million, it's pretty easy to figure out—

**Mr. Victor Fedeli:** The number is pretty big, so what is it? If it's pretty easy to figure it out, what is it?

**Mr. Chris Bentley:** No, no. There wasn't one. There was no estimate because, as all the discussions and negotiations made clear—I mean, the OPA bargained hard. They fought the arbitration hard. That's why there was no deal for so long, because people wouldn't give in. They refused to give in.

**Mr. Victor Fedeli:** When the document ordeal, as we'll call it, first began, what were your orders from the Premier with respect to the documents?

**Mr. Chris Bentley:** I did not have orders from the Premier.

**Mr. Victor Fedeli:** Okay.

**Mr. Chris Bentley:** I made the decision on the basis of—

**Mr. Victor Fedeli:** We heard from Mr. Del Duca, but I do want to just finish that thought by saying, indeed, wherever the instructions came from, the OPA acknowledges they were short 6,000 documents pulled out in the first document dump, and that is indeed why they brought us a second batch of documents.

**Mr. Chris Bentley:** I think in fairness—

**Mr. Victor Fedeli:** Where the orders came from, we can continue to discuss that, but at the end of the day—

**Mr. Chris Bentley:** No, I think—

**Mr. Victor Fedeli:** At the end of the day, there were documents that were missing, so I just want to—

**Mr. Chris Bentley:** My recollection is that, in fairness, the OPA not only had 6,000 documents; there were also a number of—

**Mr. Victor Fedeli:** Yes, a very small amount of new people that—

**Mr. Chris Bentley:** —individuals they hadn't searched.

**Mr. Victor Fedeli:** Yes, that's a very small amount. They gave us the numbers, very specific, right down to the last number here. Those numbers that were pulled out of the first one were indeed returned in the second one.

**The Chair (Mr. Shafiq Qaadri):** One minute left.

**Mr. Victor Fedeli:** Thank you. So in summary, we know you agree with the auditor's number of \$275 million, even after sticking for so long to the \$180 million—your government continues to stick to that \$180 million, up to and including the day we heard. And you've acknowledged that Oakville is much higher—an unknown number, but higher than the bogus number of \$40 million that we're continuing to hear today.

One of your sentences was that you wish that all the documents would have been turned over the first time, and I add, as opposed to the 4,000 to 6,000 being removed in the first batch and returned in the second batch.

The public wants to know what the total cost is of this Liberal gas plant scandal and who ordered the cover-up. I'm not sure, Chair, that we got any further today in knowing either of the two numbers, except that they're



not \$180 million and not \$40 million, and there are documents still missing.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, you have the floor.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. There were a number of side deals on Mississauga, which the Auditor General has referred to. Were there any side deals on Oakville that didn't show up in the memorandum of agreement?

**Mr. Chris Bentley:** When you say "side deals," they were a number of interim agreements between Greenfield and the OPA, where the OPA essentially agreed to pay costs that Greenfield was incurring as they went along.

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**Mr. Peter Tabuns:** No.

**Mr. Chris Bentley:** And that was their agreement to stop construction.

**Mr. Peter Tabuns:** No.

**Mr. Chris Bentley:** Can you refer me to which side deals you're talking about?

**Mr. Peter Tabuns:** The OPA paid \$4.4 million in legal fees and other professional fees. It gave an interest-free loan to Eastern Power for reconstruction of the re-located plant—

**Mr. Chris Bentley:** I made reference to that, yes.

**Mr. Peter Tabuns:** Pardon?

**Mr. Chris Bentley:** I made reference to that. That's something that we spoke about in the first week. The legal—

**Mr. Peter Tabuns:** Were there side deals—in other words—payments to TransCanada Enterprises that had nothing to do with the relocation itself but everything to do with coming to an agreement?

**Mr. Chris Bentley:** So you're talking—the auditor was talking about Mississauga, and you want to ask me about Oakville. Were there other side agreements? My information is that it's contained in the \$40 million and the memorandum of agreement, which was, as you know, turned into a final agreement. I'm not aware of side agreements other than that.

**Mr. Peter Tabuns:** No knowledge whatsoever?

**Mr. Chris Bentley:** I'm not aware of side agreements that aren't otherwise in the memorandum—

**Mr. Peter Tabuns:** Reflected in the memorandum of understanding—

**Mr. Chris Bentley:** —or the ultimate agreement, which was posted, I think in December.

**Mr. Peter Tabuns:** What was the maximum you were willing to spend to settle with TransCanada? How high was the sky?

**Mr. Chris Bentley:** Well, my preference was nothing. The result, whatever people account for the cost as, was a lot better than where we started, because where we started was a big cheque for nothing, payable today. But I didn't have a number. I refused to talk during the estimates committee about a number because as soon as you go out with a guesstimate or a number, everybody knows, and they start adding on to that. The OPA—

**Mr. Peter Tabuns:** You're outside estimates now. We're past it. The contract is signed.

**Mr. Chris Bentley:** What I thought the exposure was?

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** You mean what I thought the maximum exposure was? Depending on where you asked me in the process, because it evolved, it was around—

**Mr. Peter Tabuns:** Well, why don't you tell me from the beginning?

**Mr. Chris Bentley:** Well, when I became involved, I didn't really have a number, just that it was huge, somewhere between \$700 million and \$1 billion, which was not based on anything more than people's wish. As it evolved, it was probably maximum around \$700 million if you add in the cost of—that includes paying for the turbines—and \$750 million by the time—but remember, that's a cheque for nothing. There's no power station. There's no power being delivered. There's nothing. You pay them \$750 million, and you get nothing. That's why the negotiations were so crucial: to get something for the money.

**Mr. Peter Tabuns:** What was that \$750 million composed of?

**Mr. Chris Bentley:** As I say, that was the guesstimate if TransCanada got everything they wanted in the course of the arbitration. They would end up around \$750 million or more, something like that. That was the guesstimate. I sort of pulled that from different sources.

You'll appreciate, I think, Mr. Tabuns, that over the course of the negotiations and the discussions, we had the OPA, which had a much different view of life, thankfully, and we had TransCanada, which had a very complete view of life. They were apart for a long period of time, and that's why this took so long to actually reach an agreement.

In fact, we reached an agreement the morning the documents were going out. I essentially said about a month before, "If we're ever going to reach an agreement, now is the time. Get to it." I was going to have the documents go out on the Friday the 21st, but they said they were very close. I think it was in the early-morning hours that OPG finally had a board meeting and agreed that they would sell the land for commercial value where this power plant was going to go.

**Mr. Peter Tabuns:** What was the value of the profit that TransCanada wanted to have reflected?

**Mr. Chris Bentley:** You're best to speak to Mr. Andersen or somebody about that; I'm not the one. The contracts are enormously complicated. I'm not the expert on the contract. There are 1,000 different things that go into a 20-year contract to determine what their profits would actually be. What their rate of return was: Again, Mr. Andersen is the one, probably, to speak to.

**Mr. Peter Tabuns:** Going back to Mississauga then, you had two items here: cost of relocating the plant and minimizing the impacts, the \$85 million that was spent on things that could be repurposed. But you didn't have any idea that you were going to get a penny back on this at that point, did you? This was just a fiction. This was a very neat way of coming down to below \$200 million.



**Mr. Chris Bentley:** No, sorry. This is the summary of monies spent that we used at the press conference that you were at to tell you how much was spent and to tell you what we thought it was appropriate to say: the costs of cancellation, relocating here—\$180 million—and to tell you that in fact the people of Ontario had paid \$85.5 million, but we weren't adding that to the top, because that was part of the negotiation in getting the new agreement. It was repurposed.

**Mr. Peter Tabuns:** In fact, we were out \$260 million at that point, and you didn't know. In fact, we won't be paid back for over 20 years on part of that \$85 million. In fact, the value today is \$22 million. We're getting incremental payments for the next two decades. We're out. Even then, when you had paid out \$260 million, you were saying it was \$180 million.

**Mr. Chris Bentley:** I think what you're doing is taking a very complicated, long 20-year agreement and only speaking about parts of it. It was up to the energy experts and our negotiators at the table to, if they could, reach a commercially reasonable agreement that would deliver benefit to the people of Ontario. That's what we did. And you're right—day one, I said that part of the bargaining was the fact that we're paying for \$85 million worth of stuff. They went to the table along with all the other give and take in this agreement. You're right. You asked about the total—no, you asked about the summary sheet on that day, but Mr. Nicholls asked about the total. It was there. I'm not saying that I accounted for it in the way that the auditor would have—clearly I didn't; he has an entirely different approach—but we did say on day one we'd spent \$265 million and in week one we added \$10 million to that and the fact that there was a no-interest loan.

**Mr. Peter Tabuns:** So why did you say in the House that the cost to the people of Ontario was \$180 million?

**Mr. Chris Bentley:** Because that's what I believed from the beginning. But my accounting is not the auditor's accounting, and we're all going with the auditor's accounting.

**Mr. Peter Tabuns:** Well, I would say that the auditor's accounting is pretty standard accounting, frankly. He didn't do anything exotic. We questioned him in this committee. He used standard accounting practice. He took the numbers that he was able to find from the Ontario Power Authority. Tell me, is there another world of accounting that we should be familiar with?

**Mr. Chris Bentley:** I don't think I can assist you much more. I think I've spoken about the way that I saw the evolution from the big cheque to the final result. You're right: This result in Mississauga was reached July 9, not during the estimates committee proceedings until the very end. The result in Oakville was reached September 24, 2012, long after the estimates committee proceedings were done.

**Mr. Peter Tabuns:** And so within a day or so, we have the Minister of Finance, under questioning by MPP Gilles Bisson, saying that \$180 million, \$190 million—that's it; it's over, done; that's all—even though you

know there's tens of millions more that's at risk. Did you ever counsel the Minister of Finance to clear things up?

**Mr. Chris Bentley:** I think I probably answered that question for you a number of different times—and I appreciate that you have a different perspective on it—on how we presented the numbers. I also appreciate very much, as I've said over and over again—I have enormous respect for the auditor, who's done great work for the people of the province of Ontario. He's done a very thorough analysis. As I said at the beginning, his accounting is the accounting that we all take.

**Mr. Peter Tabuns:** Because I would say that it's standard accounting practice. He's done nothing but be straightforward with us. He's looked at the numbers. He asked those who had familiarity with the numbers what was spent, and he's presented a very clean, simple report—no magic. We pressed him on this. There was no magic in what he did. You could have said the same at the time: "It's \$180 million and a further \$85 million at risk. We don't know whether we'll be able to recover that." That wasn't the way it was presented to us. That wasn't the way it was presented to the people of Ontario.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

We do have a small matter to deal with for committee members, but at the outset I would like to thank you, Minister Bentley, for your presence today, your testimony, for the five ministerial portfolios of which you were steward, for your nine years of service to the people of London West as their member of provincial Parliament, and would simply say that the Legislature is a poorer place for your absence. Thank you.

**Mr. Chris Bentley:** You're very kind. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Committee is recessed for about five or 10 minutes or so.

*The committee recessed from 1640 to 1653.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I call the meeting to order.

Just to remind folks: Before we adjourned, we had voted. We need to re-vote. There was a motion presented by Mr. Delaney. It was then amended by Mr. Fedeli. We voted on the non-amended motion. We need to vote for the amended motion.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, sir.

**Mr. Bob Delaney:** It is not possible, procedurally, for two motions to be open at the same time. So, to follow the sequence of events, there was a motion to amend the original motion, and the amendment carried. Therefore, the only motion open at the time we last voted was the motion, as amended. It is not possible for there to have been two motions on the floor at the same time.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** You are brilliantly correct, as always, Mr. Delaney, and that's precisely what we're now proceeding to vote on: the motion, as amended.



**Mr. Bob Delaney:** But, Chair, that vote has in fact taken place.

**The Chair (Mr. Shafiq Qaadri):** Well, I think, as so many things are being interpreted today, I believe that that motion, as amended, needs to be voted on now.

**Mr. Bob Delaney:** Then may I just ask whether or not there is concurrence in the committee that what we voted on was the motion, as amended, and if we all concur that we voted on the motion, as amended, we need not vote on the motion again?

**The Chair (Mr. Shafiq Qaadri):** I think that's a little too touchy-feely, Mr. Delaney.

**Mr. Bob Delaney:** No, Chair—

**The Chair (Mr. Shafiq Qaadri):** I think I'd prefer to actually go and vote on the motion, as amended, formally, as is parliamentary procedure.

**Mr. Bob Delaney:** No, Chair, it is not too touchy-feely. In fact, it's very relevant, and I'm going to tell you why. Looking at the Hansard from March 5, in the House what was passed said, "That, pursuant to standing order 110(b), where the committee exercises its authority to send for persons, each party shall be entitled to an equal number of witnesses...." Chair, if we were to vote on the motion again, as amended, what we are asking the committee to do is to vote on a motion that not merely contravenes the order of the House but is in fact against the subcommittee report. That's not in order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, for your contribution. The motion is in order. As I said, the motion that we voted on previously was as unamended, and we should have voted on the motion as amended and—

**Mr. Bob Delaney:** But, Chair, how can it be in order if there cannot be two motions on the floor at the same time?

**The Chair (Mr. Shafiq Qaadri):** As I understand it, Mr. Delaney, there was a motion presented by you. It was amended. We should have voted on the motion, as amended; we voted on the motion without reference to the amendment. We are now remedying that.

**Mr. Bob Delaney:** But, Chair, that's not possible because there can only be one motion on the floor at a time. In order for your statement to be true there would have had to have been two motions on the floor at the same time.

**The Chair (Mr. Shafiq Qaadri):** During the vote previously taken in this committee this afternoon, two very crucial words were omitted. Mr. Fedeli's amendment carried. The committee was left to vote on the main motion, as amended. With the transcript reviewed, it was not stated "as amended" during the second vote. I'm required to re-put the question. As I understand it again, Mr. Delaney, it is one motion, as amended.

**Mr. Bob Delaney:** Well, Chair, I feel very strongly that, as amended, the motion before the committee—

**The Chair (Mr. Shafiq Qaadri):** That's fine. With due respect, Mr. Delaney, to your—I think the Chair has ruled. I believe that we are—

**Mr. Bob Delaney:** Then a 20-minute recess, Chair.

**The Chair (Mr. Shafiq Qaadri):** A 20-minute recess. *The committee recessed from 1657 to 1719.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting back to order. As per protocol, we are now required, without any further debate or discussion, to call the motion for a vote.

So, shall Mr. Delaney's motion, as amended—"as amended" being the operative word—by Mr. Fedeli, carry?

**Mr. Peter Tabuns:** Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** There's no discussion, Mr. Tabuns. We need to vote on this.

**Mr. Peter Tabuns:** Well, then, I have to ask for a five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** I understand we've already recessed once, and I believe that's all the recesses available on the same issue.

**Mr. Peter Tabuns:** Is that, in fact, the case?

**The Chair (Mr. Shafiq Qaadri):** Yes.

Once again, to be clear: A motion was presented by Mr. Delaney; it was amended by Mr. Fedeli; the amendment carried; we now need to vote on that motion, as amended.

Shall Mr. Delaney's motion, as amended by Mr. Fedeli, carry?

**Mr. Jim Wilson:** Recorded vote.

#### Ayes

Clark, Fedeli, Wilson.

#### Nays

Albanese, Delaney, Del Duca, Natyshak, Tabuns.

**The Chair (Mr. Shafiq Qaadri):** Thank you. That is defeated.

#### HON. BRAD DUGUID

**The Chair (Mr. Shafiq Qaadri):** I would now invite our next presenter to please come forward and to be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Brad Duguid:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Duguid, for your time, your patience and coming to us via the Ministry of Training, Colleges and Universities. Of course, members of the committee have your full biography and know of your other portfolios. I invite you to begin your five-minute opening address.

**Hon. Brad Duguid:** Well, thank you, Mr. Chair. I can see by your procedural wrangling at this committee why this committee gets such great TV ratings. It's very exciting to watch.



Thank you for the opportunity to appear before the justice committee today and to share with the committee members the information I know on the decision to cancel the Oakville power plant, as well as the Mississauga power plant.

I'll begin with the Oakville project, Mr. Chair. Opposition members have been trying in vain to turn an important decision not to pursue the building of a gas plant in Oakville into some kind of conspiracy drama, but after months and months of scrutiny, the release of thousands upon thousands of documents and unrelenting opposition rhetoric, what we're left with is a decision by the government supported vigorously by Tim Hudak, leader of the PC Party, and supported vigorously by Andrea Horwath, leader of the NDP party, and every member of every party in the Ontario Legislature. A lot of discussion has occurred about how the decision on the Oakville gas plant was made, and I'm pleased today to share with committee members, to the best of my recollection, my thoughts as the Minister of Energy responsible for making that decision.

Not long after taking on the post of Minister of Energy, I determined that there were some major challenges that needed to be considered with regard to the Oakville project. I asked the Premier if he would object to me putting some fresh eyes on the file, and he agreed. You see, there were a number of things that concerned me about this project. First, the community was not only adamantly opposed, they—led by Oakville MPP Kevin Flynn and Mayor Rob Burton—were making some valid points.

For instance, they pointed out that, under our restrictions for the placement of wind turbines, we could not put a wind turbine on this site, yet we were planning on building a gas plant that would be among the largest in North America—I believe producing about the same amount of megawatts as a nuclear reactor. Secondly, Mayor Burton and his council had adeptly used municipal bylaws to delay and potentially prevent this project from ever getting municipal approval to put a shovel in the ground.

What ultimately convinced me to recommend we not proceed with this project was information arising during the deliberations on the drafting of our long-term energy plan. We had come a long way from the Tory days, Mr. Chair, of being dependent on importing power. We had made progress in our efforts to increase generation and encourage conservation, and the fact is, the global economic slowdown had significantly lowered demand for power as well. When I discovered this plant was no longer needed in this region and the needs of this region could be met by a transmission solution, I reached the conclusion myself that going forward no longer made sense.

And so, we had a project that hadn't been started, that nobody in the community or, frankly, in this Legislature wanted, that was mired in what was an indeterminable municipal bylaw quagmire, and I was told that we didn't need to locate the plant in that area because demand had

shifted and other alternatives had been identified. On that basis, I recommended to the Premier and the government that we should not proceed any further with this troubled project. I stated these facts when I announced that the Oakville plant would be cancelled, and I hope it's of assistance in reminding committee of the reasons why cancelling the Oakville plant simply made sense.

The committee, I expect, will be interested as well in any involvement I may have had in the commitment during the election by the Ontario Liberal Party to cancel the Mississauga gas plant. I was Minister of Energy at the time of the election, but as Chris Bentley advised, the cancellation of this gas plant was a commitment made during the election by our party. I think it's relevant to add that this commitment was supported during the election, as well, by all party leaders and all parties.

I should inform the committee that, as Minister of Energy, there was some discussion before the election to consider the cancellation of the Mississauga plant. My advice at the time was not to cancel it. I did not recommend, nor was I ever asked by the Premier or cabinet, to take such action. However, once all three parties committed to cancelling the Mississauga gas plant during the election, I, like all of you here, supported the fulfillment of that election commitment.

I hope this statement, Mr. Chair, is helpful to committee. It is an honest and frank discussion of my involvement and views both on the Oakville and the Mississauga gas plants. I'm now absolutely pleased to respond to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Duguid. I'll offer the floor to the PC side.

I would just also invite all the members of the committee to allow witnesses to answer as they see fit. I appreciate that you need to move your questions along. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair.

I found your opening statement to be quite revisionist to be compared to the documents that we have been looking at so far.

So let's start: Earlier today, we had Sean Mullin, who testified how he and Jamison Steeve held several meetings behind your back with TransCanada regarding the Oakville cancellation. Why do you think the Premier kept you out of the loop on that?

**Hon. Brad Duguid:** Mr. Chair, I appreciate the question, but the facts that the member has put forward toward the question, or behind the question, simply aren't the case. The Premier, I, my office and the Premier's office worked very closely together on all the files that we had with regard to energy, and there were many files going on at that time. There was never a time that the Premier's office would have done anything that was not being done in conjunction and in communications with my office, Mr. Chair.

**Mr. Victor Fedeli:** So, again, the revisionist discussion is quite different than the sworn testimony of several people—consistently sworn testimony of several people.



Document 2, which you're going to be receiving shortly—you're going to get a whole bunch of documents here—the sworn testimony that we have from several witnesses says that in the discussions with TransCanada, that TransCanada “blew a gasket” when they were talking to you when you interjected yourself in a meeting and were trying to tell them the way it was going to be. They said, “We already have a deal—go talk to your bosses.”

Now we have notes from several people who were at the meeting, who all were witnesses with the Ministry of the Attorney General. We have sworn statements. Why do you think they told you that they already had a deal and that you should go talk to your bosses?

**Hon. Brad Duguid:** Mr. Chair, I'm pleased that the member would ask that question because I have heard that previous testimony at committee—

**Mr. Victor Fedeli:** You were probably there when you heard it.

**Hon. Brad Duguid:** —coming from the member's side, and they're referring to, I believe, an email that I believe was put forward by a bystander at that particular meeting.

**Mr. Victor Fedeli:** No, actually, Chair, that's not correct. I'm referring to sworn testimony of—

**Hon. Brad Duguid:** I'd very much appreciate it if the member would let me finish my sentence.

**Mr. Victor Fedeli:** —a meeting of Malliha Wilson, John Kelly, Halyna Perun, Carolyn Calwell, Michael Barrack and John Finnigan, to name a few, but the—

**Hon. Brad Duguid:** Who did the email come from?

**Mr. Victor Fedeli:** This is the sworn—

**Hon. Brad Duguid:** And who did the email come from?

**Mr. Victor Fedeli:** This is the typed testimony from the Attorney General. This isn't an email.

**Hon. Brad Duguid:** And who did the email come from that you're referring to?

**Mr. Victor Fedeli:** This isn't an email. I'm referring to the testimony, without prejudice, that was given to us by the Attorney General's office.

**Hon. Brad Duguid:** Well, do you want me to comment on the meeting so that I can clarify—

**Mr. Victor Fedeli:** Yes, I want to hear about what your bosses had to say—

**Hon. Brad Duguid:** Because I appreciate the opportunity to do this, but I would certainly appreciate the opportunity to comment in a fulsome way because I think that's very important.

**Mr. Victor Fedeli:** So you can't tell us, then, why you think the Premier kept you out of the loop?

**Hon. Brad Duguid:** No, I'm trying to answer your first question—

**The Chair (Mr. Shafiq Qaadri):** Gentlemen, we're all enjoying how this is degenerating, but I would appreciate if the question could be asked, and then the answer could be given relatively efficiently—

**Mr. Victor Fedeli:** Well, if we get an answer, we'll carry on.

**The Chair (Mr. Shafiq Qaadri):** And if we might dispense with the catcall overtures.

**Mr. Victor Fedeli:** So let me rephrase, then; I'll start fresh. Did you indeed go and talk to your bosses about the cancellation?

**Hon. Brad Duguid:** Mr. Chair, let me respond to the question, as I was trying to do—and I've been interrupted about four times now. I'll do my very best to respond.

1730

The meeting that the member is referring to was a meeting with the CEO of TransCanada. The meeting took place two days before we were about to make the announcement on Oakville. As a minister about to make an announcement on Oakville, I think it would be absolutely foolish of the member to think that I wouldn't be fully informed that I was about to make an announcement 48 hours later. In fact, I would have been in the process of drafting my speaking notes and preparing to answer media questions on that very announcement.

However, because this meeting had been scheduled with the CEO of TransCanada at the time, as a minister about to make an announcement, I was not in a position to be able to share with the CEO at that time what our decision was. I said to the CEO that we would get to a decision very soon. That was a cordial meeting. I recall nothing other than a cordial meeting with the CEO. At no time was I not advised or informed that we had made this decision, because I was making the announcement 48 hours later.

**Mr. Victor Fedeli:** We learned, under sworn testimony, not only that TransCanada blew a gasket at this meeting that you claim was cordial, but we also heard sworn testimony that it was indeed TransCanada executives who told you the plant was cancelled. We have sworn testimony to that. How do you react to hearing that disturbing news?

**Hon. Brad Duguid:** Considering I was about to make the announcement 48 hours after that meeting, the fact is, I was very aware that I was making that announcement. I was already preparing—

**Mr. Victor Fedeli:** And so were they, by the sounds of it.

**Hon. Brad Duguid:** —for the announcement. But I wasn't at liberty to get into any kind of detailed discussions at all or even inform, at the time, the CEO of when the announcement was going to be made—

**Mr. Victor Fedeli:** It's clear that—

**Hon. Brad Duguid:** It's a challenging position to be in sometimes, for a minister, when you're meeting with somebody and you know, within a certain period of time, that something's going to happen. But I wasn't at liberty at the time to disclose that to him. That may have been why—

**Mr. Victor Fedeli:** But they were at liberty to disclose it to you, as we have heard under sworn testimony. Clearly you didn't have any idea of what was being discussed between TransCanada and the Premier's office.

**Hon. Brad Duguid:** No, that's not true at all. Mr. Chair, that is absolutely false. That's not true at all.



**Mr. Victor Fedeli:** We have sworn statements. So you're saying that those many people who have provided that sworn statement—their statements are incorrect, is what you're saying to us here. Those Liberal staffers' statements under oath are incorrect.

**Hon. Brad Duguid:** I would suggest that the comments that I've made to you already on this issue stand. Those comments are that I was fully informed that we were going to make an announcement in 48 hours. I was making the announcement, so those comments would have been, if anything, misinformed. But I can tell you that there's no question that I was fully informed that we were making an announcement in 48 hours to cancel the Oakville plant.

**Mr. Victor Fedeli:** Well, they certainly weren't misinformed; they knew before you did.

Document 3 here is a photo that shows you at the Oakville announcement, flanked by none other than Charles Sousa and Kevin Flynn, the seat-saver participants. I want to direct your attention to the sentence here. There is also a quote from you in document 3. You say that officials have determined they no longer need the power, and in doc 4 you are quoted as saying, "Not only will the plant not be built in the GTA; it won't be built anywhere in Ontario."

Your Premier says, day after day in the Legislature, that this was a political decision. Are you now telling us it wasn't a political decision; that she's wrong and that it was a supply decision? Is that what you're telling us today?

**Hon. Brad Duguid:** Well, the Premier, referring to both the Mississauga and Oakville projects, indicated that it was a political decision.

**Mr. Victor Fedeli:** Okay, so it was a political decision.

**Hon. Brad Duguid:** I outlined in my opening statement the rationale behind the decision, so I guess my comment to you, Mr. Fedeli, would be right back at you. Your leader and your party fully supported the decision. What was the basis for your party supporting the decision?

**Mr. Victor Fedeli:** Yes, but this is your government that cancelled the Oakville gas plant. So you're now saying it was no longer a political decision, that it was indeed a—

**Mr. Steven Del Duca:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Del Duca.

**Mr. Steven Del Duca:** I know that at the beginning of the questioning of this witness, you asked the committee to deal with this in a certain way. This is a repeated pattern on the part of Mr. Fedeli, to not allow any of the witnesses today to answer questions, to constantly interrupt and, frankly, to try to mislead the committee—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. That is not precisely a point of order.

Mr. Fedeli, please continue.

**Mr. Victor Fedeli:** Thank you very much. I'll continue talking to the witnesses in the manner that I feel—

### *Interjections.*

**Hon. Brad Duguid:** He was never like that when he was mayor of North Bay.

**Mr. Victor Fedeli:** What we're hearing from this witness, in the obviously political tone that he has decided to take with this committee—

**Hon. Brad Duguid:** He was polite then.

**Mr. Victor Fedeli:** You said, "Not only will the plant not be built in the GTA; it won't be built anywhere in Ontario," because a "natural gas plant is no longer required." Your Premier has said that it was a political decision. Are you now telling us the Premier is wrong, that it was a supply decision?

**Hon. Brad Duguid:** As I said in my opening statement, I determined very soon after becoming minister that there were challenges with this project. Yes, there was concern in the community, but there were some very valid points being made by MPP Kevin Flynn, for instance, by Mayor Burton, on whether this was the appropriate site for this project. So I brought fresh eyes to the project. I asked the Premier whether he would mind if I did that.

In going through our long-term energy plan, it came to my attention that we would no longer need the plant in that area, because demand had changed, and that a transmission solution was going to be adequate to deal with it.

Once I found that out, given that this project was in a bylaw quagmire and delayed a number of times, I reached the conclusion that this plant should not be built where it is, and that we should negotiate with Trans-Canada to put the plant somewhere else.

**Mr. Victor Fedeli:** Again, the revisionist wording is excellent, but you stated, "Not only will the plant not be built in the GTA"—

**Hon. Brad Duguid:** No, Mr. Chair, that is not revisionist wording in any way.

**Mr. Victor Fedeli:** Yes, it is. You said we don't need it there. You said "it won't be built anywhere in Ontario," period. So let me ask you a simple question: Why are you building a new plant? Why did you award this company a replacement plant if "it won't be built anywhere in Ontario" because we don't need the power? Why are you building a new plant?

**Hon. Brad Duguid:** Mr. Chair, this member has known me a long time, and I think he knows me as somebody who has been elected for close to 20 years now, both municipally and provincially.

**Mr. Victor Fedeli:** I want to know why you're building a new plant.

**Hon. Brad Duguid:** I've been known for a very long time—and he knows this—as somebody who's very straight up, a very ethical politician and elected representative. When he makes comments like that, frankly, Mr. Chair, I know he doesn't believe those comments because he knows me. I've known him before he got here.

**Mr. Victor Fedeli:** I don't believe you when you're saying "it won't be built anywhere in Ontario," and now



you're building one. I know you don't feel comfortable having to squirm around with that. It was either a political decision, as the Premier said, or it was supply, as you said. But why are we building a plant, then, if we didn't need the supply any longer? I don't understand that. Just square that up for us.

**Hon. Brad Duguid:** Well, the demand had changed. When I found out, during the deliberations on the long-term energy plan—

**Mr. Victor Fedeli:** Yeah, we heard that.

**Hon. Brad Duguid:** —that we no longer needed to build a plant in that location, given that it was in a quagmire of bylaw challenges; given that the community was very adamantly against it—

**Mr. Victor Fedeli:** Yeah, we heard that.

**Hon. Brad Duguid:** —given that there were some good reasons being put forward why that was not the best location; given that your members were lobbying me not to build the plant and were opposed to the plant; given, after I made the decision, your party and your leader, the NDP and their leader all supported the decision, I think that gives me some justification to believe that that was the right decision.

**Mr. Victor Fedeli:** So let me ask you: When did you first hear of the announcement about the cancellation in Mississauga?

**Hon. Brad Duguid:** This will take a little time to answer.

**Mr. Victor Fedeli:** Oh, I'm sure it will—

**Hon. Brad Duguid:** I received a call early in the campaign, and I was advised that there was an intention to announce the cancellation of the plant in Mississauga. I reiterated my views on that decision. As I understand it, there was a pause on that announcement. I wasn't privy to the discussions around it with the party, but there was no announcement made at that time.

Later in the campaign, toward the end of the campaign, I got a second call where I had been advised that they had decided to go ahead with the announcement.

**Mr. Victor Fedeli:** So you weren't privy to the discussion on the Mississauga announcement—the energy minister.

**Hon. Brad Duguid:** No. I was advised early in the campaign that there was an intention to make an announcement to cancel the plant. As I said, I expressed my views, which were known before the election, as Minister of Energy. There was a pause on the decision. In the last week of the campaign—or not in the last week; I think in the last days of the campaign; I have to look back at the date—I got a second phone call, which indicated they had decided to cancel the plant.

1740

**Mr. Victor Fedeli:** You said you weren't privy on Mississauga. Your underlings tell us you weren't privy on TransCanada. Let me ask you what you might know. Costs: Were you ever given any estimates? Did anybody ever think to call you with any estimates of what the cancellation of Oakville might be? Did they include you in that discussion?

**Hon. Brad Duguid:** Well, we knew what the value of the contract was, so we knew there were two choices. One would be to just cancel the contract—rip it up, I guess, if you want to say it that way. The value of the contract would very much have been something that would have been a potential cost. We determined that was not the proper way to go, that the best route to go would be a negotiated settlement not to cancel the contract but to move the plant, and we wouldn't know what the outcome of that negotiation would be before we got into that negotiation.

**Mr. Victor Fedeli:** So even though you said it won't be built anywhere in Ontario, you're negotiating to move the plant, you've just finished telling us. Were you given any idea of the volume of money we're talking about here?

**Hon. Brad Duguid:** Let me just go back to that and let me be very clear: If that comment is correct, and it may well be, that was an incorrect comment.

**Mr. Victor Fedeli:** That you made?

**Hon. Brad Duguid:** That's right, in terms of not moving the plant. So let me correct that. I've never seen that quote anywhere, but if it's there, I don't—

**Mr. Victor Fedeli:** It's the Toronto Star that quoted you.

**Hon. Brad Duguid:** I don't quarrel with that, but that was not actually accurate.

**Mr. Victor Fedeli:** The Toronto Star quoted you and the Metro quoted you—two different papers.

**Hon. Brad Duguid:** I'm happy to suggest that that may have been said in error. I don't recall saying it.

**Mr. Victor Fedeli:** Do you have any idea of the scope of dollars here that we're talking about?

**Hon. Brad Duguid:** As I said, this matter was going to go into a negotiation with TransCanada. We knew that there would likely be some costs; I think they've often been referred to as sunk costs. We determined that negotiation would be the best way to go, as opposed to cutting off the agreement, ripping the agreement up, where I think there would have been litigation and potentially a much higher cost. So until the negotiations actually were begun and gone through, no, you wouldn't know until you got into the negotiations where they were actually going to land.

**Mr. Victor Fedeli:** In the negotiations, on document 6, it says here—this is a slide, the last one:

“OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March 2011.

“This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million.”

What can you tell us about this \$712-million offer that was rejected? They continue to call it—“On 29 April 2011 TCE rejected the government-instructed counter-proposal.” Three times it called it “government-instructed.” What can you tell us about that?

**Hon. Brad Duguid:** I think the best way for me to describe that would be—once the decision was made to



move the Oakville plant and renegotiate the agreement with TransCanada, my involvement in terms of those negotiations, by and large, directly, had ceased.

**Mr. Victor Fedeli:** Did you know about the \$712-million offer?

**Hon. Brad Duguid:** I don't recall being briefed on that at the time, but what I would say is this: What was happening and what normally happens in these negotiations—I've been involved in many of them in many different portfolios—is that the minister would be briefed on a regular basis as to how the negotiations are going. When it comes to the details of the negotiations, at that point in time, that information would be left to the parties to do the negotiating. When we got close—because you've got to remember this—

**Mr. Victor Fedeli:** Minister, you've got to appreciate my frustration here. We've had more than a dozen—

**Hon. Brad Duguid:** You can interrupt me if you want. I haven't finished my thought, but go ahead.

**Mr. Victor Fedeli:** But you told me you don't know anything about \$712 million.

**Hon. Brad Duguid:** Well, you've interrupted my thought now twice.

**Mr. Victor Fedeli:** You told me you didn't know. We've had 12 witnesses here all telling us that they don't know anything about it, yet it says it's a "government-instructed counter-proposal." Who in the government instructed them, then, if not the minister?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Brad Duguid:** Let me—

**Mr. Victor Fedeli:** You can have the last minute. I will not say a word. All you can do is talk about—please talk about the \$712 million. Please satisfy us on that.

**Hon. Brad Duguid:** As minister, when you're in negotiations, when the information would come to you as to where those negotiations were at would be when they're close to an agreement. This agreement didn't take place till two years after we cancelled the Oakville plant, so we weren't even close to an agreement at this point.

**The Chair (Mr. Shafiq Qaadri):** It's mutually enforced silence.

**Mr. Victor Fedeli:** I don't know where he gets two years. My time is up. We're going to get a calendar out here.

**The Chair (Mr. Shafiq Qaadri):** You do have 30 seconds left if you want.

**Mr. Victor Fedeli:** I said I would give him the time to talk about the \$712 million. I'll use it by asking: Would you care to expand on who the "instructed by the government" comes from, then, if not you? Who?

**Hon. Brad Duguid:** Again, the ministry and the Premier's office—

**Mr. Victor Fedeli:** Ah, okay; now we're getting somewhere.

**Hon. Brad Duguid:** —would have involvement, likely. Ontario Power Authority would be the lead at the negotiations.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you very much, Mr. Chair. Minister, good afternoon.

**Hon. Brad Duguid:** Great to be here.

**Mr. Peter Tabuns:** I know you've been waiting to do this for a long time.

The line of questioning here—let me go back: You met with Alex Pourbaix and Mr. Girling from TransCanada on October 5.

**Hon. Brad Duguid:** Yes.

**Mr. Peter Tabuns:** You say it was a friendly meeting and that any comments that TransCanada was angry and blew a gasket were not your experience.

**Hon. Brad Duguid:** I certainly don't recall Mr. Pourbaix ever blowing a gasket.

**Mr. Peter Tabuns:** Fair enough. You were not forthcoming at that meeting that you were going to be making an announcement two days from then?

**Hon. Brad Duguid:** That's correct. I couldn't be, by virtue of the fact that it was information I didn't feel I should be sharing with anybody at that point.

**Mr. Peter Tabuns:** The same PC document shows that there were two meetings on October 5. If you'll go to page 2 of that document—do you have it before you?

**Hon. Brad Duguid:** I'm not sure.

**Mr. Peter Tabuns:** PC document number 2?

**Hon. Brad Duguid:** PC document number 1, PC document number 3; I seem to be missing number 2. I'm missing number 2, unfortunately.

**Mr. Peter Tabuns:** We can give you one of our spares.

Apparently immediately before your meeting—if you page through and go to the bottom, "October 5, 2010—2 meetings.

"First meeting—Girling (TCE), Pourbaix," Jamison Steeve and Sean Mullin. It's them talking about language that you would be content with in a cancellation, the kind of letter that you need, "Push on protecting value," "TCE needs a letter from OPA," "Letter required prior to announcement," "Must preserve value for TCE." In other words, TransCanada and the Premier's office are talking about conditions for cancellation.

You come to a second meeting, and you're very discreet and don't say anything about a cancellation because you don't want to give anything away. What this indicates to me is, the Premier's office was working around you entirely.

**Hon. Brad Duguid:** Well, what I would offer there is the fact that, as minister just in the process of preparing to make an announcement, it wouldn't have been appropriate for me to begin negotiations with the CEO of TransCanada at that meeting. So I had to be very discreet in how I approached what was before us.

At the same time, as I think has been testified to by at least one or two members of the Premier's office, I was in the process of preliminary discussions with TransCanada, really trying to feel out where this negotiation could go and, I think, trying to determine a confirmation that, indeed, TransCanada, like us, would prefer to avoid litigation. They were doing their work directly with



TransCanada, and I was aware that they were having discussions. I, as minister, meeting with the CEO of TransCanada, though, was not at liberty to disclose the fact that, 48 hours later, we were about to make an announcement. That's not to say that the CEO of TransCanada did not have some information that he may have obtained or may have received from the Premier's office, and that would have been fine. But as minister, I did not want to get on to that slippery slope of giving information to the CEO before it would be appropriate.

1750

**Mr. Peter Tabuns:** So the only thing that was not put on the table was that the public announcement was going to be made in a day or so.

**Hon. Brad Duguid:** That's correct. My comments to the CEO, as I recall, were that we planned to move to a resolution of this very soon—or something to that nature—I think within the month or something like that. I don't recall exactly what I said—it was two and a half years ago—but it was something to that nature.

**Mr. Peter Tabuns:** Were you aware through June and July that Sean Mullin and Jamison Steeve were meeting with TransCanada about the potential cancellation of this plant?

**Hon. Brad Duguid:** Yes, I was aware that the Premier's office was having some discussions.

**Mr. Peter Tabuns:** Did they tell you what they were telling TransCanada?

**Hon. Brad Duguid:** It would be difficult for me to be able to respond as to whether I knew of every meeting they were having. I knew they were having meetings; I would have been fine with that. They were feeling-out meetings, more or less—I think that's how both of those gentlemen described them—to determine if we could find an accommodation to move forward on a basis that was fair to TransCanada and fair to Ontarians.

**Mr. Peter Tabuns:** So you were looking for an accommodation before the long-term energy plan got discussed?

**Hon. Brad Duguid:** The long-term energy plan discussions began sometime in the spring, I believe. As I recall, my full involvement in the long-term energy plan was very extensive. I spent a lot of time on that file—in fact almost on a daily basis, I believe—through the August, September area. The long-term energy plan, though—there was work being done. It took some time, so probably in and about the same time there was work being done on the long-term energy plan.

I don't recall the exact time I learned, in looking into the long-term energy plan, that we would not need that plant to be located in that location any longer. I don't recall the exact date I would have learned that, but it would have been sometime between July and August, I would think.

**Mr. Peter Tabuns:** When I look at the records, it's sometime in August, September, but these things are a bit elastic in people's minds. It looks like the Premier's office was having serious talks with TransCanada about shutting things down. In fact, there's a note here about—I

think it's on the same page; no, it's page 1—July 15, handwritten notes of Chris Breen: "Ford not going to happen [reference to location of SWGTA plant]."

"Will give you a decision ... next week."

In mid-July, were you asked about shutting down this contract?

**Hon. Brad Duguid:** I don't recall ever being asked about shutting down this contract by anybody. As I said in my opening statement, I approached the Premier very early on in my term as minister—likely even before the spring, in 2010—to suggest that we put fresh eyes on the file. So I had begun to look at these issues.

If you look at media accounts, I think the words I used—in fact, probably responding to questions from yourself—was that we were in a listening mode at that point, which was a shift, and a noted shift by yourself and the media, that we were looking at the files. So we were beginning to look at the file at that point.

We were looking at things like the delays that were taking place. I think there are one or two force majeure, which I know you have an interest in. I'd be happy to chat more about that later on. At that point, we were also looking at the long-term energy plan as we got into—it's hard for me to remember exactly when during that consideration, but we began consideration talking about the long-term energy plan probably toward the end of June or so, and carried it on through the summer. Then it became more intense in August or September. Regrettably, I don't know the specific day when I would have learned that, indeed, we don't need to build a plant there, that there was a transmission solution available.

**Mr. Peter Tabuns:** I understand from JoAnne Butler's testimony that there always was a transmission solution. You had one or the other. It wasn't as though the transmission solution was something that was a bright light that popped on in someone's head late in the process. No, you knew before you did the RFP that you could have a choice.

**Hon. Brad Duguid:** Well, I think Sean Mullin's testimony this morning, which I had an opportunity to hear, probably captured it pretty well. There were originally time concerns about when that energy would be needed to keep the lights on in the southwest GTA. At one time, it was seen as a very serious challenge for our energy system. But when the demand changed, for a variety of reasons, the opportunity for a longer-term solution presented itself, and the transmission solution, once again, was something that was considered viable again and adequate to address the challenge.

**Mr. Peter Tabuns:** You met with TransCanada around April 2010. Do you remember that meeting?

**Hon. Brad Duguid:** I know I did have other meetings with TransCanada. I don't recall the date, but go on and I'll try—

**Mr. Peter Tabuns:** Let's say March or April.

**Hon. Brad Duguid:** —and see if it comes back—

**Mr. Peter Tabuns:** So everyone is looking at the fact that you can't build this plant. You can't get a building permit. You can't operate under municipal bylaws. Why



did you folks start looking at ways to compensate TransCanada? They took a business risk; that's why they get paid the big bucks. It's a \$3-billion contract. You didn't want to take the risk; that's why you're privatizing power development. They took on a risk. They said, "Hey, this risk is turning sour. How are you guys going to help us?"

**Hon. Brad Duguid:** I know where you're going with that, and to be frank, when I was minister, I asked the very same questions that you were asking, and my mind was on that same train of thought. The challenge was, there were a couple of force majeures; I believe there were two.

**Mr. Peter Tabuns:** Yes, there were two.

**Hon. Brad Duguid:** There were delays, and the delays were mostly as a result of challenges getting the proper municipal approvals.

**Mr. Peter Tabuns:** Two approvals.

**Hon. Brad Duguid:** The fact is that the city of Oakville and the mayor and the council had done a pretty decent job tying this project up and delaying it. I did have some concerns as to whether this project would ever be able to get a shovel in the ground, given the challenges. I was advised—and I asked the same questions you did—by legal staff that that was uncertain, that there was no certainty as to whether they may be able to move forward or they may not.

But the kicker to me on this issue was the fact that the province always has the power—a lever that we don't use too often—to override the municipal bylaws. So what the legal staff had said to me was, that's the challenge. If this goes to litigation, at the end of the day, the province will likely be held responsible for not taking action, overriding the bylaws and allowing the project to go ahead. So the view of staff to me at that time was that it would present a pretty significant exposure to the city and that we had the ability to move forward with the project through that tool.

**Mr. Peter Tabuns:** You know, for my sins, I've read a lot of these legal opinions in the last while—

**Hon. Brad Duguid:** I pity you.

**Mr. Peter Tabuns:** —and I have never come across that one. So I'd ask, through the Chair, if you would come back to us and bring us that legal opinion showing that—if I understand what you're saying correctly—failure of the province to act by overriding the municipality could leave the province open to liability.

**Hon. Brad Duguid:** That was the advice that I was given. I didn't get—I didn't see a written legal opinion. That was the advice I was given from ministry staff.

**Mr. Peter Tabuns:** Who gave you that?

1800

**Hon. Brad Duguid:** I do not recall. It would be staff within a briefing, likely with the OPA, but again, it was a consistent view that was held by the ministry, by me, by my office and, I expect, the OPA. I would invite you, if you want to seek more legal advice on it, to invite experts who have a legal background, who could probably be more precise in their description, but that was the advice

that I received. That's why your train of thought, which I was absolutely in agreement with at the time as minister—I was going down that same path. That was the challenge. That was the reason why we would have had some liability according to that advice.

**Mr. Peter Tabuns:** How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** Five minutes.

**Mr. Peter Tabuns:** Excellent.

I may well have missed it, but I have yet to come across a document that follows that line of reasoning. Generally speaking, the OPA seemed to feel that this plant was in trouble, that its value was dramatically diminished as a project because it had two huge hurdles to get over. Sean Mullin had been approached about a legislative solution. It didn't look like it was going to come forward; they had missed the spring session. We had the mayor of Oakville in here saying they were willing to go to the Supreme Court of Canada, which would be way outside the window of the validity of this contract. But you maintain that ministry lawyers told you that the province would be liable if it stood aside?

**Hon. Brad Duguid:** That was the advice I was given, yes.

**Mr. Peter Tabuns:** Would your deputy minister have told you this?

**Hon. Brad Duguid:** Again, you're talking about briefings that I would have had two and a half years ago. As you're aware, when a minister has a briefing, there's often a number of ministry staff. Often on these issues, I may have had even Ontario Power Authority staff there, and my own staff. So I don't recall precisely who would have given me that advice, but it was the advice that I was given as to why we would have really wanted to avoid litigation in many ways and come to a negotiated settlement with TransCanada.

**Mr. Peter Tabuns:** I'll come back to this, but I have a few other questions I want to get in in my remaining minutes here.

When we asked for documents from the OPA, the ministry and the minister's office, we got a lot of documents, except from the minister's office. We got zero. There wasn't a single document from any of the staff in the minister's office—not a hard copy, not emails, not get-well-soon-minister cards that had been sent from TCE, nothing. Is it credible that there were no documents whatsoever in the minister's office relating to these projects from the time that you were minister?

**Hon. Brad Duguid:** I don't know what documents would be pertinent that would have been in my office or in the possession of my staff. I can tell you that in all my days as minister—I don't tend to, for instance, talk about policy files on email. I would never do that. I—

**Mr. Peter Tabuns:** I'm sorry, Minister. I don't mean your personal emails, and I don't mean your personal correspondence. How many staff did you have as minister? You had a chief of staff. You probably had a policy analyst. You probably had a scheduler. Did you have five, 10, 15 people?

**Hon. Brad Duguid:** Somewhere around there. It would fluctuate from time to time, yes.



I understand your question, but I can't think of any documents that they would have in their possession that would be pertinent to the request. Most of the kind of documents that I would see flow through—and I see it through my own eyes, but most of the documents I would see flow through would be things like decks, and generally speaking, those decks are kept by ministry staff. So the documents that I would see would likely be in front of you, and the ministry would have been responsible for producing those documents.

**Mr. Peter Tabuns:** Okay. I'll pass. I have to think about that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese, 20 minutes.

**Mrs. Laura Albanese:** Thank you, Minister, for being here with us and being so patient this afternoon with the committee.

I'm just going to go through a few questions, just to clear the record, and you can go as fast or as slow as you would like, but I just need some clarity. I want to go back and ask you a couple of questions about Oakville. We heard that there were a number of contributing factors for relocating the Oakville power plant from the long-term energy plan, and when it became apparent and clear that, due to changes in demand and supply, the plant was no longer needed—but also there was community opposition. Would you agree with that? There were a number of factors, not just one or two?

**Hon. Brad Duguid:** There's no question. There were a number of factors; that, as well as the challenges with regard to municipal approvals that were—TransCanada was very challenged getting their municipal approvals through.

**Mrs. Laura Albanese:** Why was the plant procured in the first place?

**Hon. Brad Duguid:** That's a good question. I think sometimes we forget about where we were at the time when those plants were procured. I've got the date somewhere when this plant was procured, but it was somewhere around 2000—I think Mississauga would have been about 2004, and Oakville would have come later, in 2009.

When we took office, our energy system was in a very challenging state of affairs. We didn't have enough power to meet demand. We were importing power at a very significant cost. There hadn't been the investments needed in infrastructure for many, many years. So our infrastructure was beginning to deteriorate. In essence, when we came to office, we had to rebuild the energy system here in Ontario, which meant significant investments in transmission. In fact, I believe it's now over 5,000 kilometres of transmission—that's like putting transmission from one end of the country to the other. It also meant a huge build in terms of energy generation. I believe, now, we're up to 11,500 megawatts—which is a lot—of power that has been added in new-build projects in the province.

We also decided that as we rebuild the energy system, we want to be able to produce energy in a clean way. We

want to get out of dirty coal. We want to build a clean, reliable, modern energy system, and that's what we embarked on. So, at the time that these plants would have been procured, we were in a very aggressive build of energy generation. In fact, in many ways, for the first few years we were very close to the edge in terms of having enough power to keep the lights on in this province. That's why these investments were being made, and that's why it was really important at the time that these plants were being approved.

As the long-term energy plan points out, as time went on—and that was a long period of time—demand shifted. We had the global recession in 2009, and that had an impact on demand. Our conservation initiatives were beginning to kick in as well, and as companies began to rebuild and as advanced manufacturing began to come back in Ontario, it was coming back differently. A lot of the companies were rebuilding their plants, refurbishing their plants, requiring less power to produce the same amount of production—

**Mrs. Laura Albanese:** Yes, because these were not the only plants that the government was investing in.

**Hon. Brad Duguid:** No. In fact, in all we had, if I recall, 17 gas plants that were being built during that period of time. These are the only two that I would suggest were put in locations that were conceivably not appropriate.

**Mrs. Laura Albanese:** Let's go back to the location. So we know now that Oakville had passed municipal laws, and as we heard, there were some allegations even from some of the members of the opposition that these bylaws should have been enough to stop the plant from being constructed all on their own, but you said that that's not so.

**Hon. Brad Duguid:** No. I wish it were. As I said to my colleague Mr. Tabuns, at the time I looked at it, and I did sense that it was a challenge for the project, but there was absolutely no certainty that these bylaws would prevent the project from ever being built. It certainly had delayed it. There were two force majeure, if I remember, so it delayed it. It had the potential to be challenging for the project, but there was nothing for certain. That was the advice I was given certainly by the ministry and the advice we considered.

1810

**Mrs. Laura Albanese:** One recurring issue that has come up a lot, speaking about Oakville, was the concern that TCE would sue the government and that efforts were made to avoid a lawsuit, so I'm wondering if you could elaborate on what it would have meant for the taxpayers of Ontario if TCE took legal action against the province.

**Hon. Brad Duguid:** Well, there are a few points. First is, I think if we were not to have moved that plant, it would have been the biggest mistake, given that a lot of people believed that it wasn't in the right location, given the challenges in the local community, more so given the challenges with regard to the project, but when we found out we didn't need the power in the first place in that location, it just didn't make sense to move forward with



that plant in that location. So I think had we done nothing, that would not have been the best option. My confidence in saying that is the fact that every party in the Legislature supported the decision on Oakville, not to build.

So that left two choices, from what I've been advised. One choice was to rip up the contract. Well, we're talking about a \$1.4-billion value, I believe that contract had. That would have been a huge exposure to do that. It would have been an option, but I think the best option was the one we chose, and that was to negotiate the movement of the plant somewhere else and try to do it with the least cost possible.

**Mrs. Laura Albanese:** So that would have been the best possible outcome?

**Hon. Brad Duguid:** The best outcome in an unfortunate situation.

**Mrs. Laura Albanese:** You heard before, in her testimony to this committee, JoAnne Butler from the OPA confirm that transmission upgrades are needed in the southwestern GTA, with or without a new plant in the region. Based on your experience on this file and your familiarity with the long-term energy plan, do you agree with her assessment?

**Hon. Brad Duguid:** Well, I'm not an engineer, so when I get that kind of advice, I think it's wise to accept it as factual and good advice. You know, our transmission system across the province was in need of rebuilding, so I think the point being made there was that we were ultimately going to have to invest in transmission in that community in any event, so it was a case of potentially moving this up as a greater priority in terms of transmission/build projects.

**Mrs. Laura Albanese:** I want to ask you now, given that you have served both as Minister of Energy and Minister of Economic Development and Innovation—you mentioned earlier in your testimony that you are quite experienced with commercially sensitive negotiations. In your experience, what would happen if one party got access to confidential and privileged information about the other party? Would that affect the outcome?

**Hon. Brad Duguid:** I think there's been a number of experts that have come before the committee that have confirmed that—no question. I think that's common sense. If you're in a negotiation with another party and they get access to sensitive material that potentially may expose what maybe your bottom line may be or information that can see where the weak points in your negotiation are, you're giving them an advantage. The playing field has now been altered in that negotiation, and there's no question that had that happened in these recent negotiations, Ontarians would have certainly been impacted, and it would not have been good news for Ontarians.

**Mrs. Laura Albanese:** So, as you are aware, in May 2012, the estimates committee passed a motion put forward by Mr. Leone asking for all correspondence within a specific time frame in the Ministry of Energy and the OPA related to Oakville and Mississauga, and at

the time, as we heard from Chris Bentley earlier—during the time this motion was passed, complex and sensitive negotiations were going on. In your view, what would it have meant if the OPA and the province's negotiating position—do you think it would have been prejudiced if the company had access to confidential and privileged information?

**Hon. Brad Duguid:** Mr. Bentley is a man whom we've all known a long time. If there's a more ethical public representative in the province of Ontario, I suggest I probably haven't met one—a man of full integrity. I think it's actually quite sad, when you look at the treatment that Mr. Bentley had in this Legislature for trying to do what he testified earlier today he was trying to do, and that was to be able to protect the public interest, to protect the interests of Ontarians. I think it was a low point, frankly. I've been here for close to 10 years now, and I'd served here before as an assistant many years in the Peterson years. I think that was a low point for our Legislature, that others would question the integrity of a colleague who they know is a man of absolute dignity, of absolute integrity, who would not in any way do anything but what's in the public interest.

Minister Bentley was caught in a position where he had the committee asking for documents, and he was also being advised that those documents were sensitive and would impact negotiations and potentially cost the province additional costs. What he displayed, I think, was the ultimate integrity in making his best judgment. It's very sad to see the way he was treated in this Legislature.

**Mrs. Laura Albanese:** I guess that sums up your view of the contempt charges against Mr. Bentley.

**Hon. Brad Duguid:** I've been in politics a long time, and I know there's always drama involved in some of these things, but let's go back to what it is that we're talking about here. We're talking about two power plants, and as you brought up yourself, they're two out of 17 that we initially built in terms of gas plants, so two that we didn't get right, that we determined were in the public interest to cancel—one we made the decision on; the other one was made during an election campaign by all three parties. That's what we're talking about here.

All the political intrigue around this might be interesting to some, and certainly I take my appearance here very seriously. But when all the smoke and the rhetoric are cleared, that's what we're left with: two decisions to cancel two energy projects, certainly not the first infrastructure projects cancelled in the province. I hope they're the last, but sometimes mistakes are made at the beginning of a process when you go to site a plant or go to site a project. I think when that's identified, it's in the public interest for all of us to reconsider our positions.

The fact that every party agreed with the decisions that were made ultimately tells me that there's a lot of political rhetoric around this. But at the end of the day, the cancellation of two energy plants is what we're talking about.

**Mrs. Laura Albanese:** Just on that point, almost every witness who has testified at this committee has



confirmed that all three parties committed to cancelling both power plants. Oakville Mayor Burton told the committee that he “won promises from all parties to stop the proposed power plant.” Mayor McCallion from Mississauga told us, “I think all parties would have cancelled it....” We also have transcripts, campaign literature and robocall scripts that highlight these commitments from all parties.

Does it surprise you that the opposition parties are sort of—I don’t want to say “washing their hands,” in a way, of their previous commitments and sort of coming after our government for coming through with the very same commitments that they made during the election to the people of Oakville and Mississauga?

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**Hon. Brad Duguid:** I don’t know if I would use the word “surprise,” necessarily. I think at a certain point in time, though, the public would want all parties to recognize that these decisions were made.

We were in government, so we need to take responsibility for the decisions. I don’t know if my colleagues on the other side were surprised that I was very up front about my role in making the decision on Oakville and very up front about my position on Mississauga—because I thought I owed that to the committee, to be up front about my decisions there.

Certainly, we need to take responsibility, as government. We’re in government; no question. At the same time, the opposition, when they support a decision that we’ve made, ought not to come back later on, trying to find ways to pick away at that decision. Rather, accept the fact that we all agreed that this was the right decision to make, and move forward in the best way possible.

So I don’t know if “surprise” is the right word. Maybe “disappointed” would be a better word.

**Mrs. Laura Albanese:** Let’s go back. We’ve heard different testimonies. One of them was from Stephen Thompson, from Concerned Homeowners for Intelligent Power, who testified that he tried several times to get the Conservative Party to support their cause to stop the power plant from being constructed and that they only helped once the election was under way.

Prior to the election, did any member of the PC Party talk to you, in your capacity as Minister of Energy, about this power plant? Or was the first time that you heard them express their opposition during the election?

**Hon. Brad Duguid:** Are you referring to Mississauga or Oakville or both?

**Mrs. Laura Albanese:** I am referring to Mississauga.

**Hon. Brad Duguid:** The Mississauga gas plant was actually a fairly dormant issue, even in the community, for an extended period of time. Even up until when we made the announcement on Oakville, there hadn’t been a lot of activity there. It had been contracted, I think, back in 2004—I stand to be corrected—early on in our days as a government. It had been contracted way back.

It had a number of setbacks. Certainly, I don’t have all the details to go into the history of why that plant never moved. But there wasn’t a lot happening there, so it was

a fairly dormant issue. I didn’t hear much from any of the opposition on that issue, nor did I hear much from anybody until around the Oakville time. When we made the decision on Oakville, there started to be some more activity around that plant. Part of it may have been that they were awaiting some final approvals from the city of Mississauga that had been appealed. Again, I don’t want to get into too much detail on that, because I’d have to go back and check the records. But I think that was one of the reasons why that plant had not been generating a lot of interest until about that time, and then the interest started to pick up and members began chatting with me about some of the challenges there.

**Mrs. Laura Albanese:** So during the election is when you heard about the PC Party or you were approached by any member who spoke to you as Minister of Energy?

**Hon. Brad Duguid:** We’re in the Legislature together every day—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Brad Duguid:** I wouldn’t be able to know for sure if a PC member or an NDP member had talked to me—or our own colleagues—in passing. I would suggest that I don’t recall any PC member talking to me about Mississauga before the election. But there may be somebody over there who did, and if that’s the case, I regret that I don’t recall that.

**Mrs. Laura Albanese:** Okay. Thank you, Minister.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

To the PC side: Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Again, Minister—look, I get that you don’t like hearing from these documents. They’re hurtful; I understand that. I do understand that, Brad. To hear—

**Hon. Brad Duguid:** Please let Hansard note that I’m laughing right now.

**Mr. Victor Fedeli:** Well, but to hear these people who are Liberal staffers talk the way they did about you—I understand that. All I’m going to say is—just let me warn you, I have one more. This is the document that was handed out by Mr. Tabuns, and it’s one that we were referring to as well. Let me just read you the first sentence and perhaps maybe the second one, because they kind of get to the gist of it. This is from John Kelly in the justice department, and he’s sent an email to Halyna Perun: “Halyna, I just returned a call from” Michael Barrack and John Finnigan, “counsel to TransCanada.”

**Hon. Brad Duguid:** I’m sorry, Mr. Fedeli. I can’t find where you’re at. It may be my eyesight—

**Mr. Victor Fedeli:** I’m at the first sentence.

**Hon. Brad Duguid:** Maybe I’m in the wrong document.

**Mr. Victor Fedeli:** Right at the top.

**Hon. Brad Duguid:** I can’t see that from there.

**Mr. Victor Fedeli:** That looks good.

“Halyna, I just returned a call from” Michael Barrack and John Finnigan, “counsel to TransCanada. In essence, they confirm that the govt. cancelled the contract and communicated that fact to TransCanada before the Min-



ister of Energy was advised.” This is again from the justice department telling us what’s going on in the Premier’s office. The next sentence says: “Apparently the chief of staff (or equivalent title) in the PO told one”—I’m sure it means “of”—“TransCanada’s senior people at the time they indicated the plant would not proceed that TransCanada would be ‘made whole’ as to damages.”

If you go to the next page, the big paragraph, I think this is going to get to the nub of what went on here, Minister. This is the paragraph that starts off with “I am not convinced.” This, again, is from John Kelly in the justice department talking to about a half-dozen other justice department people. These are his words:

“I think it could be argued that the govt. offered to make TCE whole when it terminated the Oakville plant (the ‘make whole’ being understood to be the net profits over the life of the contract) by finding another gas plant from which it could make the profits and in return, TCE promised not to sue, issue a press release or otherwise embarrass the govt....”

What we see here—what they allege—is, the Premier’s office cancels the TransCanada contract before they told you, and they’ve told TransCanada they’ll make them whole, and in order to save embarrassment or any press releases, they would let TransCanada build another gas plant. This is a billion-dollar decision to save embarrassment of the government. How would you react to what you’re seeing here? And I’m going to ask you: Would the Premier have approved of this? And then I’m going to ask you: Was cabinet aware of this motivation? Thank you.

**Hon. Brad Duguid:** Okay. I’ll try to keep track of those questions, and I promise not to be as hostile as I was in the first round.

**Mr. Victor Fedeli:** I’m only the messenger of these documents, Brad.

**Hon. Brad Duguid:** Let’s look at that first paragraph, because I think that’s important. There’s a suggestion in that first paragraph that somehow or another the Premier’s office had indicated to TransCanada that they had cancelled the contract without telling the minister.

**Mr. Victor Fedeli:** Yes.

**Hon. Brad Duguid:** Well, first off, the Premier’s office didn’t cancel any contract. It’s the Ontario Power Authority that would have to do that. They may have been communicating to TransCanada that our intention was to move forward with the cancellation of that contract. I was advised that that decision was made. I don’t recall the exact date I was advised, but I knew that was happening. Hence, I was preparing, when I met with TransCanada at that time—I think that’s why they’re referring to myself. When I met with TransCanada, I knew the cancellation was happening because it was within 48 hours of me making the announcement.

**Mr. Victor Fedeli:** Move on from there, then. We’ll give you that.

**Hon. Brad Duguid:** Thank you.

**Mr. Victor Fedeli:** What about the “made whole”? Do you think, Minister, they were promised to be made whole?

**Hon. Brad Duguid:** Well, again, I wasn’t in that conversation; I wasn’t in the room at that time. I did see earlier testimony about people projecting what their definitions may be of “made whole” and—

**Mr. Victor Fedeli:** Yes, I read it 10 times from 10 different people.

**Hon. Brad Duguid:** I wasn’t privy to that conversation, so I really can’t say.

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**Mr. Victor Fedeli:** Okay. So this is July 7 that John Kelly is saying his interpretation is that the Premier’s office said, “We’ll make you whole, and here’s how we’ll make you whole.” He says, “Here’s how we’ll make you whole: We’ll find you another gas plant to make the profits. In return, don’t embarrass the government.” Do you concur or do you dispute that that is the motivation why, even though we didn’t need the power—one wasn’t going to be built anywhere else in Ontario—they got a deal?

**Hon. Brad Duguid:** Well, again, I wasn’t privy to that discussion, but I’d certainly be happy to share with you what my view was at the time. We were in a challenging situation. We had a contract, and it was my view that the best way to move forward would be to negotiate the movement of the plant—

**Mr. Victor Fedeli:** I only have three minutes left, so I do have to—

**Hon. Brad Duguid:** Sure. But I think we have to recognize that there would have been some costs to TransCanada—

**Mr. Victor Fedeli:** So shortly after that email, on July 29, 2011—that’s that cabinet agenda, document 1 that I’ve shown you before, where you’ve signed it, Chris Bentley—oh, I’m sorry; it was Minister Bentley we showed this to earlier. So there’s document 1; it’s a cabinet agenda—

**Hon. Brad Duguid:** Okay.

**Mr. Victor Fedeli:** —and it’s signed by Cabinet Minister Bentley, Cabinet Minister Wynne and a couple of other signatures. Do you have that one?

**Hon. Brad Duguid:** I think I have it—document 1?

**Mr. Victor Fedeli:** Yes. Is that your signature down there?

**Hon. Brad Duguid:** My signature is on the second page.

**Mr. Victor Fedeli:** On the second page, right? You’re that second page.

**Hon. Brad Duguid:** Yes.

**Mr. Victor Fedeli:** Okay. Actually, if you go to the end, it says Wynne, Duguid, Bentley and Duncan were in that.

If you go back to the beginning, it says, “Authorizing the Ministry of Energy to....”—this is only a few days after this—“engage in settlement discussions with TransCanada ... to find commercial alternatives....” So now there’s a cabinet document tying in with what we’re saying. Is that what your instructions were, in your opinion, considering you were the energy minister at the



time—that you were to come up with a new plant for TransCanada? Is that the cabinet decision?

**Hon. Brad Duguid:** Well, actually, this decision would have been brought forward, as minister myself, to cabinet. It was the middle of the summer and cabinet wasn't meeting; time was of the essence, so cabinet made a decision, as we do sometimes in these circumstances—what we call a walk-around.

**Mr. Victor Fedeli:** We understand that. Minister Bentley explained that to us.

**Hon. Brad Duguid:** So, yes—

**Mr. Victor Fedeli:** You approved—“signified approval,” it says; those four people—to engage in a settlement to find a commercial alternative for TransCanada—give them a new plant.

**Hon. Brad Duguid:** Yes. This was in response to TransCanada's request. They wanted to know that they were going to get to some form of settlement, so their request in the negotiations—

**Mr. Victor Fedeli:** One more quick question—

**Hon. Brad Duguid:** —was to go to arbitration. That was part of—

**Mr. Victor Fedeli:** One more quick question that I've got to ask before I get gavelled out. When you first started talking, you said you got a call that Mississauga would be cancelled. Who did that call come from?

**Hon. Brad Duguid:** To the best of my recollection, I think it was Sean Mullin, but I—to the best of my recollection. I don't want to say for sure, but to the best of my recollection—

**Mr. Victor Fedeli:** So somebody told you Mississauga was cancelled and—

**Hon. Brad Duguid:** No. They—

**Mr. Victor Fedeli:** —other people were claiming that—

**Hon. Brad Duguid:** Two conversations: The first was, they were going to cancel it. I let them know what my views were. They may have reconsidered, but they didn't cancel at the time, and then I got a second call that indicated they had decided to go ahead and cancel.

**Mr. Victor Fedeli:** So let's just talk—there was another document on October 1, where—these are handwritten notes—Sean Mullin and others: “Gov't will return to TC before the LTEP is” finished “with potential options for other gas plants.” I was asking the question earlier. Why did the government guarantee TransCanada the inside track?

**Hon. Brad Duguid:** They would never be guaranteed the inside track to the long-term energy plan. What I expect they would have been referring to is any future plans around gas plant growth, where there may be opportunities to—

**Mr. Victor Fedeli:** “Before the LTEP is finalized with potential”—this is before it was finalized—

**Hon. Brad Duguid:** I heard your question, yes.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Brad Duguid:** I heard your question. No, they would never be given access to the—

**Mr. Victor Fedeli:** But this clearly states—Jamison Steeve, Sean Mullin etc. were there.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns, the floor is yours: 10 minutes.

**Mr. Peter Tabuns:** I'm going to follow on that question of the Mississauga cancellation, and then I'll go back to my regular run of questions.

**Hon. Brad Duguid:** Sure.

**Mr. Peter Tabuns:** You were called prior to a public announcement that Mississauga was going to be cancelled.

**Hon. Brad Duguid:** Yes. Well, I was called on two occasions during the campaign, and—

**Mr. Peter Tabuns:** Okay. And you were still Minister of Energy?

**Hon. Brad Duguid:** I was still Minister of Energy, but it was during the campaign—

**Mr. Peter Tabuns:** Were you called for advice or were you being called to be told?

**Hon. Brad Duguid:** I expect I was being called to get a reaction, but again, I wasn't making the call. I'd certainly be happy to elaborate a little bit on the call. It wasn't a long call. I was in the process, as you and probably everyone else were at the time, of knocking on doors. So I was right out in the street when I got the call. They advised that they were planning on making an announcement to cancel the Mississauga plant. I advised them, “You know that I'm not in favour of doing that.” Frankly, it was my view that the energy file had actually been going well during the election and it wasn't a good time to bring it up. The announcement wasn't made at that time, and I don't know exactly why it wasn't made, other than I assume that my views were being considered.

Sometime later, I got another call, toward the end of the campaign—I don't remember the exact day—that indicated they were going to go forward with the announcement.

**Mr. Peter Tabuns:** Who called you the second time?

**Hon. Brad Duguid:** Both times, I believe it was the same person. I think it was Sean Mullin.

**Mr. Peter Tabuns:** I'm not sure he was still there at the time.

**Hon. Brad Duguid:** Well, he may have been on the campaign; right?

**Mr. Peter Tabuns:** Ah, okay.

**Hon. Brad Duguid:** Yes. It was somebody from the campaign. It wasn't from Queen's Park. I believe it was, but I just can't say for sure because I was kind of on the run at that time in the campaign.

**Mr. Peter Tabuns:** Although he had been an energy analyst in the Premier's office, he wasn't running the campaign. Who was he calling at the behest of?

**Hon. Brad Duguid:** Again, he was calling to inform me on behalf of the campaign. In terms of individuals he was calling on behalf of, I wouldn't know.

**Mr. Peter Tabuns:** You've said that you and the Premier made the decision to cancel the Oakville plant.

**Hon. Brad Duguid:** Yes. Premier McGuinty and I.

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** Ultimately, you know, with—yes.

**Mr. Peter Tabuns:** How many discussions did you go through before you decided to cancel this plant?

**Hon. Brad Duguid:** As I said, when I initially approached the Premier early on when I received the privilege of serving as Minister of Energy, it would have likely been February or somewhere around there, that year, asking him if he would mind if I put some fresh eyes on this project: “There seem to be problems here, and I think I ought to take another look at it.” There was a lot of time that passed between that time in February and, ultimately, the decision in October. Throughout that time, there was consideration of what our options might be, and there would have been some discussion going back and forth.

I wouldn’t say that the Premier and I discussed this issue on a regular basis. As things evolved, I would get back to him and advise where we were at in terms of—we were in a listening mode, as I said earlier, trying to get as much information as we could and determining the best route to go. This was not a decision taken lightly. This was a big project and we knew that it was going to be a challenge.

**Mr. Peter Tabuns:** We’ve been told that the Premier didn’t know what this would cost when he cancelled it. Did you know?

**Hon. Brad Duguid:** As I’ve said before, the challenge here is, it’s impossible to know what the costs would be until you finish the negotiations. Had we ripped up the contract, I would expect that the costs would have been somewhere around the value of the agreement. But we didn’t go that route. We wanted to negotiate the movement of the plant, which, as you see in the agreement, was a complex thing to do. So we wouldn’t have known what the outcome was going to be until we entered the negotiations, and they took a long time until we got to a final agreement.

**Mr. Peter Tabuns:** I’m going to switch to the Mississauga plant.

**Hon. Brad Duguid:** Sure.

**Mr. Peter Tabuns:** Prior to the cancellation of the Mississauga plant, were you aware that your ministry, in the spring of 2011, was looking at options for blocking it?

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**Hon. Brad Duguid:** I’m sorry; in the spring—looking for options—

**Mr. Peter Tabuns:** Of 2011, yes; options for blocking the plant’s construction.

**Hon. Brad Duguid:** In what year?

**Mr. Peter Tabuns:** In 2011.

**Hon. Brad Duguid:** In 2011. It’s hard to recall at that time what would have been looked at. As I said at the outset, I would have been approached on the Mississauga plant by colleagues who had challenges in their local

communities. I would have taken a look at what the options were with regard to Mississauga.

I don’t recall any formal discussion—I certainly never had direction from the Premier or cabinet—on that issue. So that may have just been—and it’s difficult for me to say—a result of questions we were asking around, “What are the options with regard to Mississauga?” But as I said, ultimately my advice at the time was not to cancel it.

**Mr. Peter Tabuns:** When you made that decision, looking at the long-term energy plan and saying, “Okay, the rate of demand growth in the southwest GTA has slowed down. We could get away with not building it here”—and then you decided to build it somewhere else in Ontario. At the same time, the rate of demand has been dropping about half a per cent a year since 2006. So why did you build it somewhere else?

**Hon. Brad Duguid:** If you look at the long-term energy plan, which I happen to have a copy of with me today. You’ve looked at it—

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** —because we’ve talked about it. There will be a period of time, as you know, when the nuclear units are being refurbished—something you’re not too favourable about. When they’re being refurbished, there will be a gap in power at some point in time, as outlined, I believe, in the long-term energy plan, so there will be a need to continue to build power as a result of that.

That said, there will still be a need for more energy projects. Now we’re at a point in time where it will soon be time to review our long-term energy plan. We’ll have to take another look at demand going forward. We’ll have to take another look to determine whether that gap is still as severe as it initially was. Certainly, at the time that these discussions were taking place, there was still going to be a projected need for more energy generation.

**Mr. Peter Tabuns:** So we’ve signed on, or the government has signed on, for a 20-year contract to cover a five-year gap, an eight-year gap? Does this make sense?

**Hon. Brad Duguid:** Well, when you look into the future, there’s that gap with regard to the nuclear units.

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** The other challenge will be when the electrification of transportation takes place—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Brad Duguid:** —and the advent of the electric car comes into play in North America. There are very few people who don’t believe that’s going to be a serious energy challenge. So that’s longer term, but it’s within the planning period that we have to be conscious of.

**Mr. Peter Tabuns:** I’d just note, Chair, that at the end of the questions by the Liberal caucus, I have a matter I want to raise with the committee.

**The Chair (Mr. Shafiq Qaadri):** We look forward to it, Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese, 10 minutes.



**Mrs. Laura Albanese:** Thank you, Mr. Chair. I just had one last question. Former Minister Bentley was here to testify earlier today, and you mentioned that you were able to listen in on part of his testimony. I just wanted to ask what you thought of the attacks of the opposition against—

**Hon. Brad Duguid:** I appreciate that question, and I understand; the opposition do have a job to do, and I recognize that. Their job is to critique government and critique us. I don't object to any of the questions that I had today.

I think where I have a challenge is when comments are made on personality, on attacking character. That's not my style of politics. In all the years I've been in power, I've tried to avoid that. I don't think that's ever been the style of our government. It is a style of some, and I would suggest we've seen that with the Hudak campaigns; we've seen it with the Harris campaigns; we've seen it with the Harper campaigns—character attacks as opposed to dealing with what we're really here for: the facts. You know, the simple fact is, we cancelled a couple of energy plants—big decisions. We did them for—certainly Oakville—the right reasons, and when it comes to Mississauga, it was something all three political parties agreed to do during the campaign.

I don't think there's a need for personal attacks, and I'm not suggesting—today at committee I didn't see too much of that. I was a little offended by some comments made about my own character in the beginning and probably should have reacted a little less vociferously, but that's my scrappy-Scarborough-kid nature that I just can't help myself sometimes.

But I think it's more so the treatment that Mr. Bentley went through. It was challenging I'm sure for him, having the accusations being made that he was hiding documents—ridiculous. This is a man of absolute integrity, a man of ethics, before he got into politics, during his time here and certainly afterwards. I know every member around this committee has a great deal of respect for Chris Bentley. I know they did even during that time. It's just a shame when the lights of Queen's Park and the rhetoric get the better of us, and we start attacking on the basis of personality. To me, as I said, I think that was one of the low points that I've seen at Queen's Park in all the years that I've been here as an assistant or followed Queen's Park or been here as a member.

**Mrs. Laura Albanese:** Thank you very much, Minister.

**Hon. Brad Duguid:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese, and thanks to you, Minister Duguid, for your presence and testimony.

**Hon. Brad Duguid:** Thank you, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** We still have some committee business. We have a motion before the floor from Mr. Fedeli, and I invite you to present it.

**Mr. Victor Fedeli:** I move that the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget

and Treasury Board within two calendar weeks of the date of the motion passing:

(1) All documentation, electronic or otherwise, between January 1, 2010, and April 23, 2012, related to the cancellation and relocation of the power plants in Oakville and Mississauga, including but not limited to documents containing any and all proxy names or code names such as but not limited to SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana and Project Fruit Salad.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Comments before we vote on this? Mr. Delaney.

**Mr. Bob Delaney:** Chair, just to look at the wording, may I please have a five-minute recess in the event that we have a question with the wording? I understand the intent of the motion. We just need a few minutes, please.

**The Chair (Mr. Shafiq Qaadri):** A five-minute, approximate, recess.

*The committee recessed from 1848 to 1859.*

**The Chair (Mr. Shafiq Qaadri):** All right. Thank you, gentlemen and ladies. We are now back in session.

We have Mr. Fedeli's motion before the floor. Are there any further comments before we—Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. I had a discussion with Mr. Fedeli. I'm wondering whether or not we can be specific, either in an amendment or in Hansard that we can refer to: Mr. Fedeli asks for the documents within two calendar weeks of the date of the motion passing, and experience has shown us that even with the best efforts—the timespan being asked for here is a very long one; it's two years and change—we've found that it's taking them longer to do that, even with their best efforts. So I would like to ask Mr. Fedeli whether or not we can agree on some amended wording that reflects the difficulty that witnesses have told the committee. That's one point.

Another point is that the motion asks for all documentation. I'm wondering whether or not the motion could be a little more specific on what "documentation" is. Again, that's just so the people who are looking for the responsive records can have a cohesive search term to look for.

I've pointed out to Mr. Fedeli that in the wording of the language, where he says "containing any and all proxy names or code names such as"—and here are the operative words—"but not limited to" and then he's got a number of search terms. The words "but not limited to" are at the very least redundant, and otherwise, if you're looking for it, you're saying, "But what is it that you mean?" I understand his intent is that if there were any other names, to include those other names, but in the interest of clarity and assisting in moving it forward, I'd like to ask whether or not we could take this motion and perhaps word it better to enable the government to be more responsive and to get to it within a reasonable time span.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I might just advise that if Mr. Fedeli is willing

to do that, I don't think this is something that can be done on the fly. Presumably you might want to bring this up at our next committee meeting. That is an option.

**Mr. Victor Fedeli:** Thank you, Chair. I believe the motion should stand. I know that where we say "such as but not limited to" is a little bit of belts and suspenders, but I have found in the eight weeks here and in the many, many months preceding that we need that assurance. The Premier reminds us every day that documents will continue to be turned over. And this is a reasonable request of timing: two weeks. Day after day after day we've been asking for that and have wonderfully been receiving these documents, so I have no problem with it—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I take that as a no to your request, Mr. Delaney.

**Mr. Victor Fedeli:** I guess the short version would have been just no.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Any there any further comments before—yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, it does answer part of it, but one of the other parts I raised—two of the other parts I raised—are the "within two calendar weeks." I'm wondering whether or not Mr. Fedeli would consider either an expansion or some clarification that would allow for best efforts or subsequent releases or an interim report after two weeks if they haven't found everything or if they need more time—all circumstances that in the deliberations of the committee we've found have come to pass, with hard-working people doing their very best under very tight time lines.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli, "best efforts," "as able to," etc.?

**Mr. Victor Fedeli:** I'm happy with the way the motion stands, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Are there any further comments before we move to the—

**Mr. Bob Delaney:** Just one.

**The Chair (Mr. Shafiq Qaadri):** One more. Mr. Delaney.

**Mr. Bob Delaney:** The clarification over the word "documentation." Would Mr. Fedeli be able to, either in the motion or in a description before the committee, amplify what he meant by documentation, again in the interests of making the work of whoever is composing the search more doable?

**The Chair (Mr. Shafiq Qaadri):** Thank you. He doesn't seem prone to amplification, but I will ask. Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you, Chair. Was this approved by the Clerk? It's in order?

**The Chair (Mr. Shafiq Qaadri):** The motion is in order, yes.

**Mr. Victor Fedeli:** Then I'll let the motion stand. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I take it there are no further comments? All those in favour of this particular motion? All opposed? Motion carried.

Mr. Tabuns, did you have one other further order of business?

**Mr. Peter Tabuns:** Yes, thank you very much, Chair. Mr. Delaney earlier today tried to bring forward a resolution regarding having Colin Andersen appear as a witness.

**The Chair (Mr. Shafiq Qaadri):** A motion.

**Mr. Peter Tabuns:** A motion; sorry. Thank you. The motion was defeated in the end. I would ask: Are you going to be bringing forward Colin Andersen as a witness in your next rotation?

**Mr. Bob Delaney:** My understanding is that the next witness that the government plans to bring forward is Mr. Hudak, and possibly Mr. Andersen as soon as possible thereafter.

**Mr. Peter Tabuns:** So what was the urgency in getting Mr. Andersen here tomorrow, if he just goes into your longer rotation?

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, do you have a motion before the floor?

**Mr. Peter Tabuns:** No.

**The Chair (Mr. Shafiq Qaadri):** Then I would advise that this very intriguing conversation take place later.

**Mr. Bob Delaney:** I have no trouble with that, Chair.

**The Chair (Mr. Shafiq Qaadri):** Do you have a motion?

**Mr. Peter Tabuns:** No. I would just inform you, then, that we will be asking that Mr. Andersen appear before the committee on Thursday morning as our witness in place of the previously—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** This Thursday morning?

**The Chair (Mr. Shafiq Qaadri):** Seven calendar days' notice is required, apparently.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Thank you. With your indulgence, the committee is now adjourned.

*The committee adjourned at 1905.*



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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 25 April 2013

# Journal des débats (Hansard)

Jeudi 25 avril 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qaadri  
Clerk: Tamara Pomanski

Président : Shafiq Qaadri  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 25 April 2013

Jeudi 25 avril 2013

*The committee met at 0832 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I call the meeting of the Standing Committee on Justice Policy to order. As you know, we're here to consider issues on energy infrastructure with particular reference to the gas plants.

**Mr. Peter Tabuns:** I have a motion to move, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** I'm well aware of that, Mr. Tabuns. Give me two minutes, if you might.

**The Chair (Mr. Shafiq Qaadri):** There are two issues beforehand. One is, we've received about 100 pages or so from Infrastructure Ontario—

**Mr. Steve Clark:** I'm sorry. Can you repeat that?

**The Chair (Mr. Shafiq Qaadri):** We have received 100 pages or so from Infrastructure Ontario—these are to be considered confidential documents at all costs to avoid from the Toronto Star etc. Having said that, the procedure will be that we will hand those to each of the caucuses. One member from each caucus will sign a particular sheet that says, "Thank you for the receipt. It's my pledge to keep these documents confidential," and then we'll decide later what to do with them. That's one issue.

The second issue: The able research assistant, Mr. Jeff Parker, has submitted to you a timeline that the committee will follow in terms of draft report, review of report, research officer report etc. Even though it politely says "suggested," it's not suggested. It's probably what we're going to follow, period.

Mr. Tabuns, the floor is yours now.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. I have copies of this motion that I will give to the Clerk for distribution.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. We will now be taking a five-minute recess.

*The committee recessed from 0834 to 0836.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee's back in session.

Mr. Tabuns, I would invite you to read this into the record, now that it's been distributed.

**Mr. Peter Tabuns:** Thank you, Chair. I move that whereas the government has prioritized the testimony of Ontario Power Authority CEO Colin Andersen in the

media, committee proceedings and oral questions, I move that the Standing Committee on Justice Policy invite Mr. Andersen to testify before the committee on Tuesday, April 30, 2013, which is the next available witness slot designated for a Liberal witness.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Before I open the floor for questioning or any comments, I declare that this motion is out of order because the rule that you have violated—even though this does seem to happen these days—the NDP cannot tell the Liberal Party which witness to call.

**Mr. Peter Tabuns:** Mr. Chair, you didn't seem to have difficulty ruling effectively this same motion in order the other day.

**The Chair (Mr. Shafiq Qaadri):** That was their own witness.

**Mr. Peter Tabuns:** You had no difficulty when it was amended by Mr. Fedeli designating the time.

**The Chair (Mr. Shafiq Qaadri):** Thank you. It was the government caucus speaking about their own witness. As I understand it, Mr. Tabuns, you are not allowed, as the third party, to tell the government party what witness it can call.

**Mr. Peter Tabuns:** But in fact, Chair, the government brought forward a resolution. It was amended by the Conservatives, by Mr. Fedeli. You had no difficulty with that, even over the objections of the Liberals, and it was brought forward for a vote.

**The Chair (Mr. Shafiq Qaadri):** The government chose the witness. All they did was amend the date and time of the witness etc. In any case, the motion is out of order.

Mr. Bisson.

**Mr. Gilles Bisson:** Well, I beg to differ somewhat. The order of the House is pretty clear, that each caucus has an equal number of witnesses. Mr. Colin Andersen is the choice on the part of the government, therefore it comes from their list. So this is not violating in any way the order of the House. The committee is—

**The Chair (Mr. Shafiq Qaadri):** Just a moment, Mr. Bisson. I've been told that Colin Andersen is a choice of the—

**Interjection:** NDP.

**The Chair (Mr. Shafiq Qaadri):** NDP.

**Mr. Gilles Bisson:** But also of the Liberals. He's on the Liberal list.

**The Chair (Mr. Shafiq Qaadri):** Not right now.



**Mr. Gilles Bisson:** Well, yes, they've moved a motion to that effect.

**The Chair (Mr. Shafiq Qaadri):** Understood, but as I understand it, the latest incarnation of the witness choice is that Mr. Colin Andersen is an NDP choice, not a Liberal choice.

**Mr. Gilles Bisson:** Well, I go back to the point—the Liberals have indicated that this is a person they want. Not only has it been indicated in this particular committee, the Premier and the government House leader have indicated that he's an important material witness who has to be heard and is encouraging this committee to deal with it. So, certainly, it is a priority of the Liberals, I have to understand, because your own government House leader, your own Premier and your committee members have indicated so. That's the first part. It is—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson. I appreciate—

**Mr. Gilles Bisson:** One second, Chair. Just let me finish my point here. So, to what you are ruling, I would say this: The order of the House is clear. Each party is entitled to an equal number of witnesses. It is up to the committee to decide how you schedule those witnesses, and all this motion is doing is dealing with the scheduling of the witness. It is not dealing with the selection. They have already selected him. We're just dealing with the scheduling of the witness.

**The Chair (Mr. Shafiq Qaadri):** I appreciate what you're saying. I thank you for your consideration of the matter. The Chair has now officially ruled. I believe we're on solid ground for it. I have an entire page of rulings to amend that, should you wish to see it, but as I said, the issue is that the NDP cannot dictate the witness selection of another party, and that ruling stands. So this motion is now out of order.

**Mr. Gilles Bisson:** But it is not the selection. That's the point. Mr. Andersen is a selection of the Liberal Party already, so it's not a question that we're selecting on behalf of the Liberals.

**The Chair (Mr. Shafiq Qaadri):** Mr. Andersen, as I am told, is not a selection of the government party.

**Mr. Gilles Bisson:** Well, are you saying that what Mr. Milloy and what the Premier are saying in the House is not true? You can't do that.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, you'll need to take that up in a different forum. In any case, the motion is ruled out of order. We will now proceed, with your indulgence, to our first witness.

MR. CHRIS BREEN

**The Chair (Mr. Shafiq Qaadri):** I would now invite Mr. Chris Breen to please come forward. Thank you, Mr. Breen. You'll be affirmed by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Chris Breen:** I affirm.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Breen. You have five minutes for an introductory address, and then rotation questions. Go ahead.

**Mr. Chris Breen:** Thank you, Mr. Chair.

My name is Chris Breen. I'm a registered lobbyist. I've been responsible for TransCanada's government relations in Ontario for about 11 years. I'm here at the invitation of the committee. I'm here to co-operate, and I hope my testimony is helpful.

I have some knowledge related to the project known as the Oakville generating station, not to be confused with the other project that I understand your committee has reviewed, which is the project in Mississauga. That's a project that TransCanada had no involvement with. I will do my best to answer your questions. However, I am not a technical expert of any kind, especially not in the areas of electrical infrastructure, engineering or finance.

TransCanada is an energy infrastructure company focused primarily on oil and gas transportation and power generation. TransCanada operates in Canada, the United States and Mexico; has over 4,000 employees; and it owns or partially owns 20 power plants. TransCanada is the largest private sector power generator in Ontario. TransCanada's Ontario plants include Halton Hills generating station, 50% of Portlands Energy Centre, where we partner with Ontario Power Generation, and a significant partial ownership of Bruce nuclear power. TransCanada produces power from most conventional generation fuels across North America, and in Ontario, this includes natural gas and, of course, nuclear power. Part of my role is to communicate with the government on behalf of TransCanada, and this is a role that I played related to the Oakville generating station.

The Ontario Power Authority initiated a competitive procurement process for a new power plant in the southwest GTA. TransCanada responded as a contractor. TransCanada registered part of the Ford lands in Oakville as its proposed site. This land was free of any restriction related to power generation at that time.

The Ontario Power Authority announced that TransCanada was the successful bidder of the four contractors who pre-qualified. Subsequently, TransCanada signed a 20-year contract with the Ontario Power Authority. Notwithstanding the significant opposition of the town of Oakville and some from the local area, TransCanada did everything within its power to uphold its contractual obligation to build the Oakville generating station on the Ford lands in Oakville. On October 7, 2010, Energy Minister Duguid announced that the contract for the construction of the Oakville generating station would not proceed.

From day one, TransCanada's objective was to build, own and operate this new power plant on the Ford lands in Oakville, as per our contractual obligation. When it became clear that the province was cancelling the contract, TransCanada co-operated by negotiating relocation so that our shareholders would be protected and rate-payers could retain as much value as possible. These



negotiations would eventually involve the Ontario Power Authority, Infrastructure Ontario, Ontario Power Generation and the Ministry of Energy. Specifically, TransCanada entered into an arbitration agreement with the province which anticipated relocation as a best remedy for all involved with the contract.

On December 14, 2012, TransCanada signed a new contract with the Ontario Power Authority to build a 900-megawatt, combined-cycle natural-gas-fired power plant in Greater Napanee.

Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Breen. We'll begin with the NDP: Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Mr. Breen, thank you for being here this morning.

One of the matters that came up extensively in the emails we were provided with: You had a number of meetings with members of the Premier's office in the summer of 2010. Can you go through those meetings that you had?

**Mr. Chris Breen:** I can. Would you like me just to do that sort of in a free-ranging way, or did you have specific questions?

**Mr. Peter Tabuns:** No, first, I'd like to know how many meetings you had and talk about who contacted whom to set these up. Then I'll get into some details.

**Mr. Chris Breen:** Okay, great. The meetings that we had with political staff—I'll expand it a little bit wider, because we did have meetings with the energy minister's staff initially, and then, eventually, we had meetings with the Premier's office.

I think you asked about the Premier's office first. Our primary contact there was Sean Mullin. The most senior individual that I regularly dealt with in the Premier's office was Jamison Steeve. Those meetings came after meetings that we would have had with the energy minister and his staff. The most regular contact we had in the energy minister's office was the chief of staff at the time, named Craig MacLennan. Previous to Craig MacLennan, we had dealt with Paul Ungerman. Previous to Paul Ungerman, we had dealt with Jennifer Tuck.

I think that covers generally who we met with. The person who was my key contact with the Ontario Power Authority was a gentleman named Ben Chin. Ben was the vice-president of communications for the Ontario Power Authority. He was an incredibly helpful and responsive individual. He knew very well the political offices that we met with because Ben used to be a staffer in the Premier's office and, I believe, at one time, was also a candidate for the Liberal Party. So Ben, when you ask who set these meetings up, would have been critical to setting up those meetings.

The meetings took place on various dates that I can go through. How we got there was of course that we had a contract that we had to fulfill—obligations we had to fulfill as a contractor. We saw some obstruction in the way of fulfilling those obligations and I discussed that with Ben. It came to our attention—

**Mr. Peter Tabuns:** I apologize for one second. You discussed these obstructions with Ben Chin when?

**Mr. Chris Breen:** As they came up, so in real time. I can go back very quickly and try to get you a date.

**Mr. Peter Tabuns:** Yes, please.

**Mr. Chris Breen:** On March 30, 2009, that was when the town of Oakville passed an official plan amendment number 296, which attempted to prohibit power generation greater than 10 megawatts anywhere in the town of Oakville. That obviously would have been problematic to our project. On the same date, they passed an interim control bylaw number 2009-65. This interim control bylaw had effectively the same goal, albeit on an interim basis. So that was the time at which we sort of said, "Okay, these things are for real," and on or around that time, I would have spoken to Ben.

There's basically a two-track way of dealing with this when it happens to you. The first track is sort of the legal route, if you will, a combination of the Ontario Municipal Board and various courts in Ontario, where you go to try to appeal, if you will. I can go through more detail on that in a minute. The other route, which I suggest would be wise to go, is to also go the government route. This is what York Energy Centre did in King township when they experienced similar difficulty with the municipality there. What they successfully did was they went to the government and had the government pass a regulation under a piece of existing legislation that effectively allowed the province to exempt them from the Planning Act. This is what I had discussed with Ben.

The Ontario Power Authority obviously had no power to do that. So we quickly came to the conclusion that we'd better go talk to the Minister of Energy about this, or at least his staff, and see what their feeling is.

**0850**

**Mr. Peter Tabuns:** Okay. So you met with Mr. Chin from the OPA over those obstacles prior to talking to Sean Mullin and Jamison Steeve. Did you talk to people in the energy minister's office?

**Mr. Chris Breen:** Yes, we did.

**Mr. Peter Tabuns:** And that would have been Mr. MacLennan, or was it Paul Ungerman?

**Mr. Chris Breen:** It would have dated back initially to, probably, Jennifer Tuck, I believe, and Paul Ungerman. The first meeting that I have in my recollection here, with the minister present, happened on April 19. At that meeting, we gave the minister an update and we raised the notion of his desire or interest in enforcing the existing legislation, passing a regulation to deal with this. At that time, the minister was not committed to that path going forward.

**Mr. Peter Tabuns:** And then you decided to go to the Premier's office?

**Mr. Chris Breen:** At that point, the minister also asked us to consider alternative locations. He effectively suggested that he didn't see our way forward in the way that we had suggested through his activity and he suggested, "Why don't you guys come back and we can look at some alternatives of how we deal with this,



including alternative sites?” He was not interested in any other alternatives that involved Mississauga.

I’m just going through my notes from this meeting.

From there, we would have come back to the minister’s staff, discussed this with them subsequently, and eventually, in time, through a combination of Ben Chin and Mr. MacLennan, we were advised that this is something that will have to be discussed with the Premier’s office.

**Mr. Peter Tabuns:** Okay. Let’s move forward to your discussions with Sean Mullin and Jamison Steeve.

**Mr. Chris Breen:** Okay.

**Mr. Peter Tabuns:** When did you first meet with them?

**Mr. Chris Breen:** The first meeting I have on my record is June 3, 2010. Finn Greflund, who’s a retired executive from TransCanada, and I met with Mr. Steeve and Mr. Mullin. At this meeting, again, they encouraged us to look at alternative locations.

It’s really important for me to make one point, if I may. At every one of these meetings, we stressed each time, “Look, not only do we believe that the Ford lands in Oakville is the best site for the project; we have a contractual obligation to build it there. So notwithstanding these conversations about alternatives that you’ve requested, we must continue to march forward with Oakville until such a time as somebody relieves us of those contractual obligations.” So I point that out to explain to you why there may have been, apparently, two different conversations happening simultaneously.

**Mr. Peter Tabuns:** Did you believe that Jamison Steeve and Sean Mullin were negotiating with you?

**Mr. Chris Breen:** Negotiating? I think what they were—certainly not negotiating in the sense of fine-detail dollars and cents. I think what they were saying to us was quite clearly that this plant is not likely to move ahead on the site that you’ve chosen.

So they talked to us about possibilities on land that we own in Halton Hills, next to the power plant that exists. They talked to us about Nanticoke. They talked to us about north Oakville. And when I say, “They talked to us” about this, I think there was a combination: They would suggest sites; we would say, “What about this?” A collection of sites was beginning to come together. Over time, for whatever reason, those sites kind of fell off the table. That led, ultimately, to the cancellation announcement, where not only was it announced that our project wouldn’t go ahead in Oakville; I believe it was announced at the time that there wouldn’t be a project built in the GTA.

**Mr. Peter Tabuns:** And just going back, you said that Jamison Steeve and Sean Mullin said that this plant was not likely to go ahead in Oakville.

**Mr. Chris Breen:** That’s right.

**Mr. Peter Tabuns:** Why was that their opinion?

**Mr. Chris Breen:** There were two themes that were recognized at the meetings. At the early meeting, so June 3, 2010, largely it was, I would say, focused on the activities in Oakville, the fact that the town was putting

up these obstructions, the fact that there was a growing organization opposed to the power plant. That seemed to be the focus of the first meeting.

As we moved on through subsequent meetings, that theme obviously remained. There was reference to Mr. Flynn, the local MPP, and his strong opposition—a private member’s bill that he was trying to get some support for. Then as we got closer to the date of the actual announcement, there was a suggestion to us that the power was actually no longer needed. That would be a big part of the stated rationale for the cancellation when it was announced.

**Mr. Peter Tabuns:** You seem to have extensive notes from your meetings.

**Mr. Chris Breen:** Yes, sir, I do have—I wouldn’t call them extensive; I have handwritten notes in the way that I try to take them when there’s a busy conversation going on.

**Mr. Peter Tabuns:** Would you be willing to file those notes with this committee?

**Mr. Chris Breen:** Yes, sir. I would like permission to just discuss that with TransCanada subsequent to this meeting, and then get back in touch with your Clerk, if that’s okay.

**Mr. Peter Tabuns:** I will move a motion at the end about a request for the notes.

**Mr. Chris Breen:** I want to stress that TransCanada has been very co-operative and supportive of my appearance here today, and I can’t imagine that they’ll have any difficulty with that.

**Mr. Peter Tabuns:** When you were meeting with the Premier’s office, was the Ministry of Energy involved in those discussions in any way?

**Mr. Chris Breen:** The minister’s staff—I don’t recall them attending meetings with the Premier’s staff. From my notes, it looks like we’d have meetings with Craig MacLennan and/or other staff, and on occasion his minister, and then separate meetings with the Premier’s staff.

**Mr. Peter Tabuns:** Were you talking to the Ontario Power Authority at this point?

**Mr. Chris Breen:** Yes. I was in contact with Ben Chin I would almost say on a daily basis.

**Mr. Peter Tabuns:** That’s a pretty high level of contact.

**Mr. Chris Breen:** It is. Ben and I—first of all, I just really found him to be an extremely intuitive character. He and I saw this storm cloud, if you will, coming a little earlier maybe than some others did. Our view was, whatever happens here, whichever track one chooses to fix this problem, these things take time, and we’d better get these issues on the table now with those who need to understand them.

It was an effort, shall I say. There’s always a competition for government’s attention, and on certain days, I didn’t feel we were doing very well in that competition. Ben would probably describe me as an enthusiastic pursuer of his attention, if I can put it that way.

**Mr. Peter Tabuns:** An interesting way to put it.



In the summer, you were told that this plant was not likely to go ahead. How seriously did you and your board, you and your corporation, take that?

**Mr. Chris Breen:** We took it very seriously. We did everything in our power (1) to keep moving forward with our contractual obligation; and (2) to try to convince those that we were hearing that message from that this was not our preferred route, and tried to point out to them—remind them of the fact that we did indeed have a contract and that there were obligations not just on our side, but also on the government's side through the Ontario Power Authority.

**Mr. Peter Tabuns:** And in your discussions or negotiations with the staff from the Premier's office, did you enter into discussions about dollar figures, compensation, matters of that sort?

**Mr. Chris Breen:** Specific dollar figures, no. I think what I always said in conversation, when they talked about alternatives, was if you do decide to move this plant, it is going to be more expensive generally. When we came back with presentations of potential sites, we did estimates, and the engineers in our company would tell me that they weren't really estimates. Their definition of an "estimate" is—they need several months and a lot of due diligence to produce what they would call an estimate. We weren't given that kind of time. They pulled together what they could in short order. In some of those documents, which I believe are public documents now, there were estimates of the incremental cost of moving to A, B, C or D.

0900

**Mr. Peter Tabuns:** One matter that comes up with us fairly regularly is this whole question of keeping TCE whole or close to whole. Was this something that was put forward by staff from the Premier's office?

**Mr. Chris Breen:** This was put forward by TransCanada, and, ultimately—I'm looking at my notes from October 5, which I believe was two days prior to the announcement, which I think happened on October 7. Our executives who came to that meeting were very clear. They said, "We have a contract. We're seriously advising you against cancelling it, but if you do cancel it, we expect to be kept whole." They added that, "Our idea of being kept whole is just that if you don't want us to build there—we're a contractor. Just send us to another site. We'll build on the other site." But whatever incremental costs there are in doing that, that cost will be borne by the person who cancels the contract, not the contractor who received this news.

**Mr. Peter Tabuns:** In that meeting on October 5, we've had indication—notes that were second-hand, taken by ministry staff in the summer of 2011—that this was quite a heated meeting, that one of your executives got very angry with the Minister of Energy—"blew a gasket" is the term I'm sure you've heard. Can you describe that meeting, and did it appear that the minister didn't know that the contract was on the verge of being cancelled?

**Mr. Chris Breen:** There were two meetings that day. The first meeting happened with Mr. Steeve and Mr.

Mullin, and that was attended by myself, Russ Girling, who's our CEO, and Alex Pourbaix, who's the president of energy and oil pipelines.

At the first meeting, it was a very frank discussion. Mr. Steeve led on that side, and he told us, "We've decided we're going to cancel your contract." We had a discussion about that, and he indicated that—I think Friday was the day that it was to be cancelled. I think we were in there on a Wednesday. That's when our executive told Mr. Steeve exactly what they would be expecting because obviously they were going to have shareholders and a board to answer to, and they said clearly, "If you're going to do that, you should give us a letter explaining what that means to us." That was a very frank conversation; bad news, obviously, but at least it was frank and everything was on the table.

We left that meeting and immediately went down the hall to meet with the minister, Brad Duguid, his deputy, David Lindsay, and Craig MacLennan, his chief of staff. What happened in that meeting was that the minister, for whatever reason, did not speak to the definitive cancellation and the timing of the announcement. He's a very polite gentleman and it was a very polite conversation, but it really wasn't getting to the same point where the last conversation happened. My recollection is, at one point—

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Chris Breen:** —I actually stepped in and said, "We just came from the Premier's office. We understand that the announcement is to be made on Friday. We're going to be expecting a letter." At that point, the minister politely wrapped up the meeting, and we moved on.

**Mr. Peter Tabuns:** Okay.

**Mr. Chris Breen:** As for "blow a gasket," I think there was probably some physical body language that showed a degree of exasperation from the three of us. When we got outside, I can tell you, our CEO did say, "Well, that was strange." We had one very frank conversation, and then we went into the other room and we just seemed to be having this very circular conversation. So he was a little exasperated by that.

**Mr. Peter Tabuns:** Okay. In the discussions that you had on the morning of that day, was there any sense of the cost envelope—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. Good morning, Mr. Breen. Thank you for being here today. I think you've explained pretty well how TransCanada is an important producer in Ontario's supply mix.

Just to sort of lead in: Would you provide me a very brief rundown of TransCanada's energy projects across the province?

**Mr. Chris Breen:** Across the province? Okay. Historically, we had five smaller natural-gas-fired power plants that could best be described—in northern Ontario. They were sold several years ago. Subsequent to that, there was a significant investment in Bruce nuclear power in



Kincardine. The investment was made in two steps. I believe, in the first investment, we invested about one third in two of the units; then, in a subsequent investment, I think we invested more, closer to 40%, low 40%, in two other units. We also have a power plant in downtown, in the east end, in the port lands, on which we partner with Ontario Power Generation 50-50. Then there's Halton Hills generating station. That's, I think, a 680-megawatt natural-gas-fired combined cycle plant. That's on the 401 near Halton Hills, just as you enter Halton Hills.

We of course also operate Canada's main natural gas pipeline, part of which runs through Ontario. Currently, we are in the midst of—and this is all public information—a fairly significant solar power investment. That's a turnkey sort of deal, and we're still waiting for the contractor to finish construction and have the thing fully operational, after which TransCanada would take ownership.

**Mr. Bob Delaney:** That would make you one of the biggest power suppliers in Ontario, then.

**Mr. Chris Breen:** We're one of the biggest—I think we're the biggest private investor. I think Ontario Power Generation still produces over 60% of the power in Ontario. I think some would think of Bruce nuclear as the biggest private power producer; that's probably true. By virtue of us being, I think, if not their biggest certainly one of their biggest investors, plus our other assets I described, we are certainly one of the larger private investors, if not the—I think we are the largest private investor in Ontario.

**Mr. Bob Delaney:** Beyond what you've said in your exchange with Mr. Tabuns, could you expand on TransCanada's working relationship with both the province and with the Ontario Power Authority?

**Mr. Chris Breen:** Sure. So with the Ontario Power Authority, because that's the relationship that exists contractually, I would say it has always been positive. It was strained, obviously, by this experience. The working relationship would mainly be through, apart from my relationship with Ben Chin and his successor, Kristin Jenkins—the relationship would also be through JoAnne Butler, who was the vice-president in charge of the procurement for the southwest GTA, and in time Alex Pourbaix, our president, and Colin Andersen also had meetings and had a relationship. So that's sort of the people generally involved in the Ontario Power Authority relationship.

The relationship with the Ontario government, again, has always been very positive. Again, it was somewhat constricted—maybe “strained” is the wrong word—by this situation, especially once we got to a point where we had to get our lawyers involved. As you can imagine, that often curtails conversation between us and the government. That's unfortunate because Ontario's very important to us, and we're proud of our investments here. We look forward to resolving this matter and continuing with a very positive relationship here in Ontario.

**Mr. Bob Delaney:** Setting aside Oakville, on a day-to-day basis, are you normally able to resolve issues that

occur in a long-term working relationship with both the OPA and with the government?

**Mr. Chris Breen:** I would say generally, yes.

**Mr. Bob Delaney:** Okay. Talk a little bit about the Oakville project, then. Minister Duguid, who at the time, as you noted, had the energy portfolio, testified to the committee that the decision not to move forward in Oakville was made by him and then-Premier McGuinty. From what we've been told about the decision, throughout the negotiations both sides worked hard to relocate the power plant, which I think you've been saying in your previous testimony, as opposed to, I guess, to be draconian, simply ripping up the contract and walking away. Would that be incorrect?

0910

**Mr. Chris Breen:** No, I think that's correct. I think that there was always a realization on the government side that they had a liability to TransCanada. That was kind of a given, as there was no clause in the contract that allowed for the termination that happened.

I remember a CEO saying one time to us, very clearly, “Look, you guys, don't get me wrong here. I'm not looking for a cheque out of the Ontario government; what I'm looking for is to build, own and operate a power plant. That's what we want to do. That's what we do around here. I don't want to go to court if I can avoid it, and I'm not asking for a cheque. I'm asking for a project equivalent to the one that was just cancelled.”

**Mr. Bob Delaney:** In the end, then, TransCanada didn't litigate because both the company and the province, if I'm grasping you correctly, negotiated in good faith on finding an alternate site. As you said earlier, you're a contractor; you wanted to build a power plant.

**Mr. Chris Breen:** That's right. Our lawyers would give you a much more eloquent explanation as to why we did not wind up in litigation. I would describe it as a desire by both sides to work this thing out into a deal where both sides get something out of it and people feel good and we can get back to a positive working relationship, and perhaps we found a way to do that in a quicker manner and a less confrontational manner than traditional litigation.

**Mr. Bob Delaney:** Essentially, an outcome that both parties kept in mind during the negotiations.

**Mr. Chris Breen:** That was certainly always on our mind. I would say that every indication coming from the power authority and the government side was that they also thought that a relocation was probably the optimal solution for everybody involved.

**Mr. Bob Delaney:** Okay. I have a few questions about the factors that led to the decision to relocate Oakville. Earlier, when the former minister, Minister Duguid, appeared before the committee, he said that part of the decision came as a result of the strong local opposition to the plant. I gather from what you say that TransCanada was also experiencing some fairly strong pushback from the town of Oakville as well as the residents. Could you give us a description, remembering back then what sort of opposition you were facing, how you felt about it and what you felt your options were?



**Mr. Chris Breen:** Sure. Initially, we had every reason to believe that we had an opportunity to move ahead in Oakville. What I mean by that is, there were a couple of years of consultation before the RFP, which was conducted by the Ontario Power Authority, and there was no objection or interim control bylaw or official plan amendment introduced by the town during those years. The zoning of the Ford lands was in place that would have allowed power generation at the time. Mayor Burton, I think, testified that he tried to keep an open mind to it initially, and that's how I would describe our initial meetings with the mayor. So that's sort of where we started.

In time, that obviously changed. Specifically, the town did pass an official plan amendment and an interim control bylaw. At the time of cancellation, we had three applications in the Ontario Superior Court to deal with that new obstructive bylaw and the official plan amendment. We had an appeal in Divisional Court to deal with an OMB decision on the interim control bylaw, and we had two appeals before the Ontario Municipal Board regarding our site plan application and a request for minor variance and consent. So that's, on paper, what we were experiencing from the town.

With respect to C4CA, Citizens for Clean Air, they were very well organized, and they made their presence known through media—social media and traditional media—and their group did appear to grow over time, and that was the means by which we heard from them and felt their presence.

**Mr. Bob Delaney:** Let's do a couple of clarification questions. The Oakville land: What was its zoning when you purchased the land?

**Mr. Chris Breen:** I'll go back a little bit here. March 26, 2009, is when we registered part of the Ford lands as our proposed site under the RFP, and at that point, it was free of any restrictions related to power generation. That was the law of the land when we registered that day.

Subsequent to that, the town moved the interim control bylaw and attempted to put in an official plan amendment. When they did that, the Ontario Power Authority actually got involved and said, "Hang on a second. We can't keep moving the goalposts here. We're going to recognize the zoning as it was back when applicants had to register their sites," which we thought was very fair. We also took that as an expression that the province indeed wanted to continue to carry through on the minister's directive, which formed our contract, and we took it as an act of good faith from the province that they intended to see this thing through.

**Mr. Bob Delaney:** Okay. In terms of the municipal bylaws that were enacted by the town of Oakville, did you feel that the province could override those bylaws, if necessary, through provincial legislation?

**Mr. Chris Breen:** Yes. What we saw was—and I can give you the specific acts. When we went in and talked to the minister about this and actually had the minister's staff in our office and had our lawyers present to the staff how this could be done—and I've got two briefing notes

here that lay out what we put before them—a few weeks later, they actually did that in King township for the York Energy Centre. So the exact date of that regulation that they passed—I'll come up with it in a moment.

**Mr. Bob Delaney:** Okay. You mentioned earlier that TransCanada had appealed the bylaws to the Ontario Municipal Board. Correct?

**Mr. Chris Breen:** That's right.

**Mr. Bob Delaney:** So you actually filed the appeal. Did it ever get to the point where the OMB made a ruling?

**Mr. Chris Breen:** At the first hearing, the OMB upheld the interim control bylaw. They stressed the fact that it was interim, and what the town was asking for was just some time so it could decide what its interests were in this matter. So they upheld that. They rejected the official plan amendment, which would have been, in my understanding, a more permanent instrument that the town tried to install.

**Mr. Bob Delaney:** How did that affect TCE's approach to the project at that time?

**Mr. Chris Breen:** At that time we knew that we had some work to do. We were still very confident that we could get through this. We were confident that there was legislation in place that would enable the province to say, "We're in charge of power generation. We have the Planning Act and the Municipal Act that we can use, and we just need to enact regulations under that to move this thing through and keep us on track with the minister's directive."

**Mr. Bob Delaney:** In other words, when you say that you were confident that you would get through this, you were confident that ultimately you would be able to build the Oakville facility where it was originally planned?

**Mr. Chris Breen:** Absolutely.

**Mr. Bob Delaney:** Okay. Had the province not intervened or had you not had your discussions with the OPA, can you tell me what additional efforts and actions TransCanada was prepared to undertake with regard to the bylaw?

**Mr. Chris Breen:** In general, I would say "any and all." We were already before two different courts with what looks like about four actions, and we were before the OMB, the Ontario Municipal Board, with two appeals. We had a contractual obligation. It was very clearly spelled out in black and white that that was our responsibility: "You have to go through every possible channel to deliver on your obligations in this contract." And we would have done that.

**Mr. Bob Delaney:** In the absence of the actions taken by the province, in your mind you were very confident that, through the OMB, TransCanada would have had a ruling in its favour and you would have been able to proceed without further interference to constructing and operating the power plant in Oakville.

**Mr. Chris Breen:** Not just through the OMB. We had, as I said, the Ontario Superior Court and Divisional Court, and we would have taken this to whatever court was required in order to deliver on our commitments.



**Mr. Bob Delaney:** Did the legal opinions you received at the time tell you that you were on solid ground and, had all of those actions proceeded, that it is likely you would have won them?

0920

**Mr. Chris Breen:** Generally, yes.

**Mr. Bob Delaney:** Okay. What would have happened had the government decided to relocate the plant after construction had commenced?

**Mr. Chris Breen:** I think it's fair to say that the longer you wait in one of these situations, the more expensive your decision becomes. We had done some site preparation, but we hadn't actually advanced with installing steel, delivering turbines, pouring concrete. The later you get in the stage—it's no different than building a house. If you're going to move the house, best do it before you dig the hole, and certainly better to do it before you put up the shingles.

**Mr. Bob Delaney:** In some of the terms used before this committee during our hearings, I can interpret what you've said to mean that the sunk costs would have been dramatically higher.

**Mr. Chris Breen:** They would have been higher.

**Mr. Bob Delaney:** Okay. Were there any other costs in addition to sunk costs that would have been incurred had the plant been relocated after work commenced?

**Mr. Chris Breen:** We're dealing with a fairly speculative situation here. The sunk costs would have been higher. The costs in general would have been higher. I'm having a hard time figuring out specifically which other costs we would identify.

**Mr. Bob Delaney:** Okay. No, that's fine. That answers the question.

Another factor that contributed to the government's decision to relocate Oakville was a result of simply changing energy needs in that area. The committee has heard from a number of witnesses who said that as they were updating the long-term energy plan in the summer of 2010, it became clear that as a result of declining industrial demands and better-than-expected conservation efforts, there was a reduced energy need in the Oakville area and that the need for the electricity that the plant would have produced when it came on stream was both lower and further back in time; in other words, not as imminent as was originally anticipated. Did any of these points come up in your discussions with the government in and around this time, the summer of 2010?

**Mr. Chris Breen:** Those points were really accentuated in October, just before the cancellation.

**Mr. Bob Delaney:** At any point in the discussion did either you or anyone else at TransCanada Energy see the long-term energy plan document before it was released?

**Mr. Chris Breen:** No.

**Mr. Bob Delaney:** Thank you.

I just want to ask you about some of your discussions with the various offices. There has been a bit of discussion at the committee regarding meetings that took place between TransCanada Energy and the Premier's office, and you referenced a few of these earlier, with

Jamison Steeve and Sean Mullin. Both have testified before the committee and confirmed that they never made a direct monetary offer or a promise to TransCanada Energy. Is that correct, in your estimation?

**Mr. Chris Breen:** A direct monetary offer? I would say, that is correct. I would say that there was a discussion about being kept whole.

**Mr. Bob Delaney:** They also said—and I'm just checking your recollection here—that their role in those meetings was to listen, and that happened until they were screened out as the probability of litigation became higher.

**Mr. Chris Breen:** I would say that they did more than listen, because obviously they were the ones who told us that alternatives needed to be sought, and—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Chris Breen:**—ultimately they told us that the contract was being cancelled.

**Mr. Bob Delaney:** All right. You've worked in government. Is it fairly common to have senior advisers to ministries and the Premier meet with stakeholders?

**Mr. Chris Breen:** Yes.

**Mr. Bob Delaney:** Okay. I think we'll stop there, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. Good morning, Mr. Breen.

**Mr. Chris Breen:** Good morning, sir.

**Mr. Victor Fedeli:** I just want to have our documents distributed. While the documents are being distributed, I can confirm that we're going to start at document 2, 3, 4 and then go to document 1. You don't need to actually see them to be able to comment on them.

You referred to a meeting on April 19 with the minister.

**Mr. Chris Breen:** Yes, sir.

**Mr. Victor Fedeli:** I can tell you, we have the meeting notes—the briefing notes, actually. The discussion seems to be—the agenda is a discussion of solutions, presentation of Oakville. There are problems in Oakville. The suggested response from the Premier should be, “Thank you for briefing me. I share your concern. I appreciate that you've presented some ideas. This is an urgent issue. We're going to give this priority.” That's his notes to talk to you about back on April 19.

Then we jump to document 3, where you write to Paul Ungerman and say, “Hey, we're going to be in town in a month”—this is September 3—“around October 5. How about a meeting to catch up with the minister?” They write back and say, “Sounds good. Let's have a meeting on October 5 to catch up.”

Document 4—this is September 29: This is the meeting note for the October 5 meeting that the energy minister is going to have with you, Russ Girling and Alex Pourbaix. The agenda: “Status report by TransCanada.” This doesn't sound very urgent to me, that the minister knew of any cancellation, when the agenda is going to be



a status report by TransCanada discussion. In fact, his suggested response would be, “I appreciate the update. I share your concern about the impacts of Oakville’s actions, and want to continue to work with you to resolve a satisfactory solution.

“This is an urgent issue; we are continuing to give this a priority attention.”

It sounds the same as the one from five months earlier. It doesn’t sound as if anything in the minister’s mind changed between the April 19 briefing notes and his briefing notes for your October 5 meeting. Would that be a fair and accurate representation?

**Mr. Chris Breen:** Yes, what you just described to me would be reflective of my recollection of the minister’s response to us at the meeting on October 5.

**Mr. Victor Fedeli:** He didn’t know anything, did he?

**Mr. Chris Breen:** I can’t say that with any certainty. I can say that if he did know, he did not speak to either the definitive cancellation or even the timing of it.

**Mr. Victor Fedeli:** I think he stuck pretty close to the notes that were prepared, to have an update. This is a status report by TransCanada.

**Mr. Chris Breen:** I haven’t read the notes, but I would be inclined to agree.

**Mr. Victor Fedeli:** I just want to confirm: You told us that Jamison Steeve from the Premier’s office is the one who told you of the cancellation.

**Mr. Chris Breen:** That’s correct.

**Mr. Victor Fedeli:** I want you to go to document 1. MB is a Michael—

**Mr. Chris Breen:** Michael Barrack.

**Mr. Victor Fedeli:** Who is he?

**Mr. Chris Breen:** Michael is a lawyer who works for TransCanada.

**Mr. Victor Fedeli:** I don’t know whose notes these are; they came from the Ministry of the Attorney General. It says, “MB: received assurance that TCE would be kept mostly whole and consideration was to keep quiet and work on alternatives.” It goes on to say, from Halyna Perun, one of the counsel, referring to her notes, “I have: TCE made it clear that needed letter that would be kept mostly whole.... Received assurance on that. Would put it in writing and quid pro quo was to lay low and work on alternatives.”

You were obviously aware that there was a letter that was being asked for. I think you referred to that in your commentary as well.

**Mr. Chris Breen:** Yes, sir.

**Mr. Victor Fedeli:** The next page goes on to say—and this is Halyna Perun again, the government’s counsel: [“I have MB says TCE ‘blew a gasket’]—we already have a deal—go talk to your bosses.”

Then “Breen says go find out what the PO said.”

Do you recall that?

**Mr. Chris Breen:** I don’t recall saying those exact words. I think what’s important to focus on is the time between the meeting that we had in the Premier’s office, where this conversation happened, and the letter that we received on October 7. There was an exchange that went

on in those couple of days over what the language in that letter would be. We were very firm about our expectations of what would go in that letter. That’s probably when I would have said—I know that I said at one conference call with a number of individuals on the phone, “This is what we were told. This is”—

0930

**Mr. Victor Fedeli:** By whom?

**Mr. Chris Breen:** By Jamison Steeve.

**Mr. Victor Fedeli:** From the Premier’s office?

**Mr. Chris Breen:** From the Premier’s office.

**Mr. Victor Fedeli:** Okay.

**Mr. Chris Breen:** When we were in that meeting, we insisted upon being kept whole, and Mr. Steeve responded by basically saying, “Look, we must preserve value for TransCanada. The threat of your litigation is a constant motivator.” He made several statements just short of saying, “Yes, you will be kept whole.” But when we left that room, we were convinced we would be kept whole, and then the letter that we received subsequently on October 7 satisfied us to that extent.

**Mr. Victor Fedeli:** So when it says here, “Breen says go find out what the PO said ... [HP]”—Halyna Perun—“I also have: Ben Chin checks with boss”—comes back and they have the October 7 letter” that you’re referring to, which says, “as whole as possible,” is that accurate?

**Mr. Chris Breen:** I don’t recall words “as whole as possible.” What I do recall is mainly a bunch of conference calls, some that went late into the night, and I have an email in my notes where I confirm with our side that I’d just heard from Ben Chin and that he had confirmed that the next draft of the letter would satisfy what we were looking for.

**Mr. Victor Fedeli:** And did that come and satisfy you?

**Mr. Chris Breen:** It did. We received the letter on October 7, which was the day of the cancellation, and—

**Mr. Victor Fedeli:** Can we file a copy of that letter as well?

**Mr. Chris Breen:** Absolutely.

**Mr. Victor Fedeli:** Thank you. So clearly, this was driven by the Premier’s office, not the Ministry of Energy?

**Mr. Chris Breen:** The conversation that we had was with the Premier’s office, about cancellation. Then the execution of things from there had to be with the Ontario Power Authority.

**Mr. Victor Fedeli:** Thank you.

On document 5, this is now a document that starts to talk about the cost summary. It says, paid to September of 2010, \$57 million. This would have been “Equipment, EPC, Internal, Land, Other, IDC” etc., \$57 million. Somewhere in document 1, in fact, if we go back to document 1, AP—I don’t know who AP is.

**Mr. Chris Breen:** Probably Alex Pourbaix.

**Mr. Victor Fedeli:** Yes. “We have already spent \$60 million.” Is that, the \$60 million he’s referring to, the paid to September—the timing is merely days away. This document shows \$57 million having been spent by that



time. In your estimation, would he be referring to the \$60 million that you've already spent?

**Mr. Chris Breen:** I'm not familiar with this document, but I'm looking at the flip side of it. This is an email from Terry Bennett, who was reporting directly to Alex at the time.

**Mr. Victor Fedeli:** Yes.

**Mr. Chris Breen:** It says, "Attached is a copy of the OGS cost summary," and then if you flip it over, it says, "OGS Cost Summary."

**Mr. Victor Fedeli:** Yes, Oakville generating station—

**Mr. Chris Breen:** And it appears to me to be as you've described it.

**Mr. Victor Fedeli:** So this is a TransCanada document showing that in September you've already got sunk costs in of \$57 million?

**Mr. Chris Breen:** I don't know if they're sunk costs—

**Mr. Victor Fedeli:** I may have misspoken. "We have already spent \$60 million."

**Mr. Chris Breen:** Right, and not necessarily all those costs would be sunk.

**Mr. Victor Fedeli:** Yes, I understand. It says, "and will spend \$100 million more in the next month."

So we go to the forecast for 10/10, \$73.5 million, and we go to the cancellation at 10/10—there are a couple of asterisks; I'll be fair with that—of \$131 million. They start getting into some discounting and the "Ford land is assumed" and that kind of thing with the asterisks.

These are the first times we're starting to see some numbers appear, and this would have been in October, just maybe a week and a half after you were told by the Premier's office that the project was being cancelled. So we're on the same page on the starting of the numbers here?

**Mr. Chris Breen:** I'm following what you're showing me.

**Mr. Victor Fedeli:** Yes. So let's take a big leap now all the way to April 2011, when I've got PC doc 6. It's a slide from Ontario Power Authority. Okay?

This one here says, "OPA was instructed by the government to make a second counter-proposal...." So somewhere between October and March there was a proposal made. I don't have this one file copied, but I'll refer to it. Somewhere there was a proposal made, and I understand it was a proposal of around \$450 million, almost \$500 million. I don't have the document for that; I can't seem to find that in the 56,000 documents. It obviously was rejected because the document that you have says, "OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March...."

"This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million." I have another document from the OPA called "Government-instructed second counter-proposal," which brings it in at over \$700 million.

"On 29 April 2011 TCE rejected the government-instructed counter-proposal."

Can you shed any light on this one for me? We've had two months of witnesses here, and not one witness has acknowledged the existence of a \$712-million offer or rejection.

**Mr. Chris Breen:** Whatever offer was made, it wasn't being rejected. TransCanada's position would be that it did not represent the financial value of \$712 million.

**Mr. Victor Fedeli:** Do you know who made the offer?

**Mr. Chris Breen:** The offer that's described on this page does not reflect the offer that I'm aware of. The offer that I'm aware of is Colin Andersen's letter to Alex Pourbaix proposing that we go ahead and build a peaking natural-gas-fired plant in the Kitchener-Waterloo area, and then he goes on to describe this opportunity that he wants to offer Alex.

It was wholly unacceptable to TransCanada. I would generally say that the project was too small. I would generally say that TransCanada and the OPA disagreed on what the costs looked like. I would say that TransCanada and the OPA disagreed on what the revenues would look like. There is a back and forth of some letters here on that.

**Mr. Victor Fedeli:** It looks like the progression here would be that TransCanada made a proposal that looks pretty close to \$900 million at one point, according to the OPA; OPA makes a counter-proposal somewhere pretty close to \$500 million; it gets rejected—that was an OPA proposal. Then they call it a government-instructed second counter-proposal for \$712 million.

**Mr. Chris Breen:** And we would say that we never saw a proposal that had that kind of value in it. The proposals that we saw would not have passed the TransCanada board as stand-alone projects, let alone as replacements for the Oakville project.

**Mr. Victor Fedeli:** The one that you're saying, the Colin Andersen letter that offers that peaker: What's the date on that one? OPA says that on April 29, 2011, "TCE rejected the government-instructed counter-proposal." This is the second proposal now.

**Mr. Chris Breen:** I'm looking at a letter from Colin Andersen to Alex that's dated April 21.

**Mr. Victor Fedeli:** "This government-instructed counter-proposal to settle was submitted on 21 April.... It had an effective financial value of \$712 million."

**Mr. Chris Breen:** We have a letter on the 21st suggesting the peaker plant in Cambridge. We have a response to Colin rejecting that offer on April 29.

**Mr. Victor Fedeli:** Okay. We now know that Colin Andersen is the one who sent you the government-instructed counter-proposal.

**Mr. Chris Breen:** I can tell you that I've got a letter from Colin Andersen. Who instructed it, I don't know.

**Mr. Victor Fedeli:** All I can go by is the OPA slide that says that it's a "government-instructed counter-proposal."

**Mr. Chris Breen:** I appreciate that, sir. I'm reading the exact same thing.

**Mr. Victor Fedeli:** You've provided the first clarity in two months to the fact that there actually was an offer



made on the 21st of April and rejected by you on the 29th. For that alone, I say thank you. We'll get to the bottom of who from the government instructed a counter-proposal at another date, but at least we now understand that there was a counter-offer from the government.

Why did TCE reject it?

**Mr. Chris Breen:** Simply put, we completely disagreed on the financial value of the offer. OPA thought it was much higher than our analysis showed.

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The other thing I would add is that I do believe—and I'm going to take a quick look at this letter—we also pointed out that technically, it just wasn't possible to use the turbines that were on the way to deliver the project that was described by Mr. Andersen.

**Mr. Victor Fedeli:** I saw some documents here that basically said the same thing. You can't use those turbines in Cambridge. There's some letter here I read in one of those 56,000 documents.

**Mr. Chris Breen:** It wasn't that you couldn't use the turbines in Cambridge; it's just that you couldn't get as high an output from the turbines in what's called season three as the OPA was requiring.

**Mr. Victor Fedeli:** Yes. So go to doc 7. This is after the \$712-million offer is rejected. Now we have PC doc 7, and I'll just read you the first paragraph. This is from the justice ministry:

"Halyna, I just returned a call from Michael Barrack and John Finnigan, counsel to TransCanada. In essence, they confirm that the govt. cancelled the contract and communicated that fact to TransCanada before the Minister of Energy was advised. Apparently the chief of staff (or equivalent title) in the PO told one—I'm going to put the word "of"—"TransCanada's senior people at the time they indicated the plant would not proceed that TransCanada would be 'made whole' as to damages."

Is that your understanding as well?

**Mr. Chris Breen:** Yes. That was the impression that was left in our meeting. The meeting went—

**Mr. Victor Fedeli:** Now we're into May, by the way. We're more than half a year away.

**Mr. Chris Breen:** But I think they're going back to the meeting that was held in October, where we demanded to be kept whole and we received those answers that I described.

**Mr. Victor Fedeli:** So now we've got the justice department talking about your being made whole. So go to page 2. It's the paragraph on page 2, the fourth sentence, but it's the whole paragraph.

**Mr. Chris Breen:** Are we still on PC doc number 7?

**Mr. Victor Fedeli:** We are.

**Mr. Chris Breen:** Okay.

**Mr. Victor Fedeli:** The second sentence of that paragraph: "I think it could be argued that the govt. offered to make TCE whole when it terminated the Oakville plant (the 'make whole' being understood to be the net profits over the life of the contract) by finding another gas plant from which it could make the profits, and in return, TCE

promised not to sue, issue a press release or otherwise embarrass the govt...."

When they started talking about moving the plant from Oakville down to Bath, when was that first discussion held about that being this replacement plant?

**Mr. Chris Breen:** I don't know exactly, but it would have been, I believe, later than July 2011.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** That \$712 million that was rejected: Did you reject it because the \$712 million—well, why was it rejected? I just need to confirm that.

**Mr. Chris Breen:** Sure. There's a letter here which describes why it was rejected. It's over two pages long.

**Mr. Victor Fedeli:** Was the financial value you needed greater?

**Mr. Chris Breen:** Yes. The subheadings are "Terms and Conditions, Issues" and "Value Issues." Those are the two umbrellas of the rationale.

**Mr. Victor Fedeli:** So \$712 million was not enough to make you whole?

**Mr. Chris Breen:** No. Our assessment would be that there wasn't \$712 million worth of value in that contract—sorry; in the offer.

**Mr. Victor Fedeli:** In the offer; okay.

How much time did you say?

**The Chair (Mr. Shafiq Qaadri):** Twelve seconds.

**Mr. Victor Fedeli:** I'll pass. I'll get you in the next 10 minutes.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Twelve seconds is a killer; there's just no getting around it.

If I heard you correctly, the Liberal government overrode the municipal objections in northern York region about the time you were asking them to take legislative action in Oakville. Is that correct?

**Mr. Chris Breen:** On May 26, I believe it is—I just found that date; let me get this thing opened. On May 26, 2010, cabinet passed a regulation exempting York Energy Centre, who were building a project in King township—at that time the contractor was named Pristine Power—from the Planning Act.

**Mr. Peter Tabuns:** That's interesting to me, because I actually went out to the public meetings in northern York region on that plant, which I think is vastly oversized. I introduced a private member's bill to try and stop the plant. The mayors in that region opposed this. The citizens were mobilized. Short of bringing in Erin Brockovich—which they couldn't afford to do. Oakville seemed to be able to do it; more power to them.

**Mr. John Yakabuski:** Less power.

**Mr. Peter Tabuns:** Yak, don't interfere with my line.

It's the same sort of citizen anger and push, and municipal blockage. We have Julia Munro, a Conservative, representing northern York region; and Kevin Flynn, a Liberal, in Oakville. Did your people find it strange that the government was willing to bend the rules or, frankly, change the rules in northern York region in a Conservative seat and not in a Liberal seat?



**Mr. Chris Breen:** Our company would have found it strange that they enacted a regulation in King township and did not do so in Oakville.

**Mr. Peter Tabuns:** Okay. So do I.

The question of the long-term energy plan: In notes that Jamison Steeve provided, not to you but kept himself and provided to legal counsel of the province when they were reviewing what happened here, he notes that you were told—TransCanada—that the long-term energy plan was going to be finalized in mid-November and that they would be speaking to you about the different gas plant options prior to finalization of the long-term energy plan. Did he or someone else from the government come to you and talk to you before the long-term energy plan was finalized?

**Mr. Chris Breen:** No. I think the only conversations that we would have had were very general ones. They were ones where we were pushing, and we weren't getting a whole lot of reception on the other end. We had a lot of attention from that office leading up to and including the day the announcement was made. After that, it became a challenge to follow up and figure out how we were going to remedy the breach.

**Mr. Peter Tabuns:** Okay. Your communications with Jamison Steeve, Sean Mullin and Mr. MacLennan: Did you ever send emails to each other?

**Mr. Chris Breen:** Very rarely. As part of our preparation for the arbitration, we did a search for any communication. I saw very little email. Any email, for the most part, was very administrative: "What time are we meeting? Where are we meeting?", with the exception of one email, which is where we exchange, if you will—or, I said to them, "Here's the language that needs to appear in this letter in order for TransCanada to react in a positive, co-operative way and focus on relocating the plant."

**Mr. Peter Tabuns:** And was there any communication by hard copy?

**Mr. Chris Breen:** By hard copy? No.

**Mr. Peter Tabuns:** The whole question of the obstacles and barriers you were encountering: Was TransCanada worried that they would be put into a force majeure situation?

**Mr. Chris Breen:** Force majeure is a contract term, as you know.

**Mr. Peter Tabuns:** Correct.

**Mr. Chris Breen:** I don't have the definition of force majeure for the original Oakville contract. What I would say is that TransCanada were confident that they were going to eventually get to build the project on the Ford lands, but clearly we had some work to do at the Ontario Municipal Board and the various courts that I had mentioned earlier.

**Mr. Peter Tabuns:** Okay. Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. Peter Tabuns:** If you will give me one-minute notice before I'm done here? Thank you.

**The Chair (Mr. Shafiq Qaadri):** As I do.

**Mr. Peter Tabuns:** The memorandum of understanding between TransCanada, the OPA and the crown

was finalized in September 2012. It included a series of sunk costs, but it also meant that OPA ratepayers were on the hook for a number of costs. Is it your understanding that the OPA and the crown understood that it was taking on additional costs, such as gas delivery and management, capital costs related to gas line upgrades, new interconnection costs?

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**Mr. Chris Breen:** Yes, sir. By virtue of the fact that this MOU was signed by representatives of the Minister of Energy, I would assume they understood what was in the MOU.

**Mr. Peter Tabuns:** And can I assume that prior to its signing, there was back and forth between TransCanada and the other side so that everybody knew what the costs were that were coming forward?

**Mr. Chris Breen:** I know there was negotiation. I didn't sit in those negotiations. I know it would be very difficult to know with precision what costs for things like gas management and delivery would be if that hasn't been negotiated with the gas franchise company ahead of time.

**Mr. Peter Tabuns:** Did you have an estimate of how much in terms of cost had been transferred from TransCanada to the OPA with regard to gas management and the other connection fees?

**Mr. Chris Breen:** No. We had a firm number on turbines, which was \$210 million, and we had a firm number on sunk costs, which we capped at \$40 million. We turned those over to the Ontario Power Authority; they hired an independent auditor who verified those costs.

**Mr. Peter Tabuns:** Shortly thereafter, though—no, not even shortly thereafter. In terms of knowing that the province, the OPA, had assumed these costs, did you have a range of the value of these other costs, the gas management costs, for instance?

**Mr. Chris Breen:** I did not. I've heard previous witnesses here provide those ranges, I think from the Ontario Power Authority.

**Mr. Peter Tabuns:** Can you tell us how Lennox was selected as a site?

**Mr. Chris Breen:** Again, I wasn't in those negotiations. My understanding is that when Infrastructure Ontario got involved to help try to come up with a solution, at that point Ontario Power Generation was also eventually involved, and I think they had some sites that were potentials. I think they were thrown on the table and eventually Lennox was chosen.

**Mr. Peter Tabuns:** Did you have a sense from your end as to who the final decision-maker was on the Oakville cancellation?

**Mr. Chris Breen:** The most senior person I ever met with was Minister Duguid, in the ministry. The most senior person that we dealt with regularly was Mr. Steeve from the Premier's office. That's as much as I know. I've heard since what I think everyone's heard, that this did go—it was a discussion of cabinet ministers and ultimately, I think, the Premier has taken ultimate responsibility for the cancellation.



**Mr. Peter Tabuns:** Have you or TCE ever met with Kathleen Wynne or her senior staff on this issue?

**Mr. Chris Breen:** No, sir.

**Mr. Peter Tabuns:** Okay. Chair, I have—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** Mr. Breen, thank you. I very much appreciated your help this morning.

**Mr. Chris Breen:** Thank you, sir.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. If you're yielding your time—

**Mr. Peter Tabuns:** No, I'm not. I have a motion which you've circulated, and I have a second motion—

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, this is not the time for motions. We're hearing witnesses right now.

**Mr. Peter Tabuns:** Do I not have time?

**The Chair (Mr. Shafiq Qaadri):** If you've yielded your time, then I'll move to the government.

**Mr. Peter Tabuns:** Then we will go to my motions immediately upon the resolution of questions?

**The Chair (Mr. Shafiq Qaadri):** I'll look forward to it.

The government: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair.

During some of the questioning and during your discussion of the meetings with Mr. Mullin and Mr. Steeve, a lot of the discussion has been focused around TCE's desire to be "kept whole," which is a term that has some legal meaning. I just want to make sure we're talking about the same thing. It's my interpretation that "kept whole" means, in part, that TCE wanted to make sure the province recognized they had a contract—

**Mr. Chris Breen:** Correct.

**Mr. Bob Delaney:** —and, in listening to your discussion throughout the morning, that the best outcome for both sides was to find an alternative project that would have a similar value and allow TCE to recoup the costs already spent, as opposed to the government writing you a cheque for having done nothing?

**Mr. Chris Breen:** That's right, sir.

**Mr. Bob Delaney:** Okay. Some clarification questions on your meeting with Minister Duguid just before the plant was cancelled: Did the minister give you any overview of what the ministry's feelings and interpretations were beforehand?

**Mr. Chris Breen:** No, sir.

**Mr. Bob Delaney:** Okay. The minister testified earlier in the week that he was fully aware of the decisions being made and explained that in that meeting he deliberately stayed, as he put it, high-level, because it would be inappropriate to negotiate on that deal at that time. Would that be your recollection of the way the meeting went?

**Mr. Chris Breen:** I would say that the minister was extremely high-level in that meeting.

**Mr. Bob Delaney:** Okay. I'd like to talk a little bit about a story in the Toronto Sun on October 18, 2012. The article stated that Deb Hutton, the wife of PC leader Tim Hudak, had been paid \$40,900 from October 2009 to October 2010 by TCE. According to the OPA, that pay-

ment to her contributed to the sunk costs of relocating the project. What was Ms. Hutton's role during those 12 months?

**Mr. Chris Breen:** Ms. Hutton's role continues. For several years, she has been a supplier to TransCanada. She does research for us and some analysis from her home. She does not come to our office. She is a supplier, if you will, and she sends information and analysis in.

It should be added that Ms. Hutton reviewed this with the provincial Integrity Commissioner before she accepted this relatively small contract with TransCanada. We're pleased to have Ms. Hutton as part of our team.

**Mr. Bob Delaney:** Did she attend any meetings during the time?

**Mr. Chris Breen:** No, sir.

**Mr. Bob Delaney:** Did she provide you with any advice on negotiating or dealing with the government?

**Mr. Chris Breen:** No, sir. Her role was basically media monitoring, and she would help find public information. On occasion, she might send an email attached to that information giving us a heads-up on what she thought was contained in that media article.

**Mr. Bob Delaney:** Okay. Were you aware that, during the time that you were negotiating with the government on the Oakville plant, the PC Party was, in fact, expressing its opposition to the plant?

**Mr. Chris Breen:** I know that locally there was opposition to the plant. I don't recall any strong opposition other than—I think MPP Ted Chudleigh had made some remarks to the effect that he was opposed. I'm not sure if that was his opinion as an MPP or if that was representative of party policy.

**Mr. Bob Delaney:** Okay. Were you aware that the plant was also opposed by the Conservative Party at the federal level?

**Mr. Chris Breen:** Terence Young, the member of Parliament, made that abundantly clear to me in person one evening.

**Mr. Bob Delaney:** Did he send you anything in writing?

**Mr. Chris Breen:** I think he may have, but I didn't need his letter after I ran into him.

**Mr. Bob Delaney:** Okay. Chair, I think that sums up where the government—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair.

Can you confirm that TransCanada has already been paid \$250 million by the province of Ontario with respect to the Oakville cancellation?

**Mr. Chris Breen:** I know that the commitment is there to pay \$210 million for turbines and \$40 million for sunk costs. I am not sure that the cheque has been delivered.

**Mr. Victor Fedeli:** Where are those \$210-million turbines today?

**Mr. Chris Breen:** They are still in the fabrication mode. Mitsubishi is producing those, and I believe that is happening in Japan, if I'm not mistaken.



**Mr. Victor Fedeli:** And so they'll be turned over to you to turn them over to the government?

**Mr. Chris Breen:** No. I don't know the exact route of delivery, but it sounds to me like it would make most sense now, when they're finished, to deliver them to the site and use those turbines in the village of Bath, greater Napanee.

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**Mr. Victor Fedeli:** The "buckets of costs": Have you heard that expression in our—

**Mr. Chris Breen:** I have.

**Mr. Victor Fedeli:** In your estimation, then, what are these buckets of costs?

**Mr. Chris Breen:** I guess you'd divide them into two major divisions. One would be the cancellation costs. You just cancel the Oakville contract and you're not going to do anything else. Those, I would determine as cancellation costs. Then there's a second set of costs, which is, "We now own these turbines and we're going to need power. So let's move them down to greater Napanee and let's build a power plant there." So there are moving costs associated with that.

**Mr. Victor Fedeli:** Are those included anywhere yet?

**Mr. Chris Breen:** I can tell you about the sunk cost of \$40 million that has been capped and audited. I can tell you about the \$210 million for gas turbines, capped and audited.

The other costs are not to the account of TransCanada, if you will. A lot of those are to be determined. I understand that there's a transmission cost related to the cancellation of Oakville. I'd suggest that some combination of the Ontario Power Authority and Hydro One would be a good place to go to find out about those.

**Mr. Victor Fedeli:** Yes, we think we've heard about a dozen times—I think there are 14, maybe, references to \$200 million in transmission costs that are coming.

**Mr. Chris Breen:** Yes. I'm not aware whose estimate—

**Mr. Victor Fedeli:** That's because it's in Bath as opposed to in Oakville.

**Mr. Victor Fedeli:** Right. I'm not aware whose estimate that is. There's also an issue, I guess, of how expedited that transmission needs to be as a result of not building a new power plant in Oakville. But again, we're not the experts on that.

The other costs that are related to moving are the gas management and delivery charges that you've mentioned and have been speculated upon, I guess, or estimated, in previous testimony.

**Mr. Victor Fedeli:** The first person who brought up that number was Bruce Sharp. Do you know Bruce Sharp? Do you know who he is?

**Mr. Chris Breen:** I know who he is.

**Mr. Victor Fedeli:** He has estimated that number at—I think his number was \$316 million. The OPA has estimated that number at \$313 million to \$476 million. Do you have any understanding of gas delivery and management? Is there any light you could shed on it, talking about their two numbers?

**Mr. Chris Breen:** None that would be as helpful as other experts. I can tell you that it's to be negotiated. It has been negotiated with the franchise owner in the area, and I can tell you that the further you move away from the gas storage hub, in theory, perhaps the more expensive it gets to deliver and manage gas services.

**Mr. Victor Fedeli:** We saw the opposite of that happen in the Mississauga one, where, because they've moved the Mississauga plant to Lambton, there was an actual savings of about \$60 million in gas management. But those savings did not accrue to the government; they accrued to the contract holder, who made the extra dollars because the gas is closer to them. Would you expect that you'll pay the extra dollars because the gas is farther this time?

**Mr. Chris Breen:** In theory, and I can only say "in theory," that's something that I would hold in mind. But I would stress that whatever those costs are, they are to the account of the Ontario Power Authority. This is—

**Mr. Victor Fedeli:** Tell me that again. No, I asked you: Are you going to pay for that extra \$300 million to \$476 million, or do you expect the government to?

**Mr. Chris Breen:** The Ontario Power Authority will have to pay that cost. With respect to those costs—that is why I don't have an estimate for them. There are other power projects in Ontario where the Ontario Power Authority has chosen to take on those costs as well. I believe there's a similar arrangement at Halton Hills, where we own a power plant, and I believe there's a similar arrangement at Portlands Energy Centre, where we own half of the plant.

**Mr. Victor Fedeli:** Any other buckets of costs? Any other cost buckets that we're not aware of here today?

**Mr. Chris Breen:** The only other one that I would—well, significant one, and I don't have an estimate on it because, again, it will be to the cost of the Ontario Power Authority, will be the electric connection at site: connecting the new plant to the high-voltage lines that are very near to the—

**Mr. Victor Fedeli:** Why would that be different there than in Oakville? I don't understand that one.

**Mr. Chris Breen:** Like I said, I don't know what the difference in the price will be, but whatever the price is to connect is to the account of the Ontario Power Authority.

**Mr. Victor Fedeli:** Okay. So you agree, then, that there are buckets of costs coming?

**Mr. Chris Breen:** There's no question. There will be moving costs related to going from Oakville to Bath.

**Mr. Victor Fedeli:** Minister Bentley described the costs as huge. Would you acknowledge that, concur with him or disagree with him?

**Mr. Chris Breen:** I would say that they will be significant. "Huge" is a very difficult number to quantify. I think you've had some legitimate people, such as JoAnne Butler—who's a very experienced professional—who has been in here and given some estimates. She, of course, reports directly to Colin Andersen, the OPA—that's their CEO. They're going to have to pay these

ills. So I'd follow up with JoAnne and see when she might have more definition on those estimates.

**Mr. Victor Fedeli:** Yes, she has been in here, and the number is getting up into the—high; very high; huge—hundreds of millions.

When did your negotiations, discussions, meetings with Mullin and Steeve end?

**Mr. Chris Breen:** They ended pretty much—the last meeting was on October 5. I would have sent them an email probably on October 6, saying, “Here’s the draft language.” They would have then passed that over to the Ontario Power Authority. I don’t recall having any meetings or conversations with them after that.

From there, we dealt with the Ontario Power Authority, who found themselves in an awkward position and did their best to make the best of the situation that they found themselves in.

**Mr. Victor Fedeli:** I want to go back to that October 5 meeting. I think there’s one sentence that I hadn’t read yet. You don’t need the notes. I’m just going to read it out loud. It says here, “Meeting with Duguid.

“Ben Chin told MAG”—Ministry of the Attorney General—“lawyers, ‘Breen told me later that he was surprised the minister didn’t know, and I was also surprised when Breen told me.’” Do you acknowledge that?

**Mr. Chris Breen:** Yes, sir. I would make one point of clarification. That was the impression I was left with. I’ve since heard the minister’s testimony yesterday, and of course, that would defer with my impression.

**Mr. Victor Fedeli:** Yes. I want to just—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:**—secure a couple of thoughts. In your opinion, there’s no hesitation for you to say that the direction to cancel this came from the Premier of Ontario’s office?

**Mr. Chris Breen:** I would say that every indication says to me that that’s where the decision was ultimately discussed. Then it would have gone through some form, I assume, of formal channel—

**Mr. Victor Fedeli:** To Steeve, to you?

**Mr. Chris Breen:** Steeve to me is where the decision was communicated.

**Mr. Victor Fedeli:** Okay. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, for your time. Thanks to you, Mr. Breen, for your deputation and presence on behalf of TransCanada Energy.

As pledged, Mr. Tabuns, you immediately and instantaneously have the floor for your motion.

**Mr. Peter Tabuns:** You’re a very good Chair, Mr. Chair.

I have two motions. I’ll read out the first, which has been circulated. Madam Clerk, I have a replacement motion.

I move that Mr. Chris Breen produce his notes related to meetings with the office of the Minister of Energy and the Premier’s office in respect of the Oakville gas plant within the next two weeks of this motion passing.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, just before we entertain comments on this: This motion, as

you know, offers a respectful invitation to Mr. Breen to provide his notes. I just remind the committee and all members that, as a parliamentary committee, we can subpoena those notes should we find it necessary.

With that, I would—yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, I move an amendment to the motion.

**The Chair (Mr. Shafiq Qaadri):** An amendment to the motion. Do you have it in writing, Mr. Delaney?

**Mr. Bob Delaney:** I do.

**The Chair (Mr. Shafiq Qaadri):** May we have it?

**Mr. Bob Delaney:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Could you add your amendment or read the amendment, Mr. Delaney?

**Mr. Bob Delaney:** Chair, after the words “Premier’s office,” add the words “and correspondence with Deb Hutton.”

**The Chair (Mr. Shafiq Qaadri):** —“and correspondence with Deb Hutton.” Fair enough.

Are there any comments on this particular amendment?

**Mr. Peter Tabuns:** Yes. Why is that relevant?

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any further comments? Seeing none, we’ll vote on the amendment. Those in favour of the amendment as read, please vote. Those opposed? The amendment is defeated.

We now move to the main motion. If there are no further comments, those in favour of the amendment with reference to Mr. Breen’s notes? Those in favour?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** The main motion, unamended, so we don’t have to do this again. All opposed? The motion carries.

Mr. Tabuns, you have a second motion?

**Mr. Peter Tabuns:** I do have, and I have copies here for the committee.

**Mr. John Yakabuski:** Just while we’re looking at this motion, Mr. Breen, what do you figure the transmission would cost if we had built a power plant on the moon?

**Mr. Chris Breen:** I’m not going to go there—literally or figuratively.

**Mr. John Yakabuski:** It would be tough to keep you whole, though.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, I believe all members of the committee have your motion.

**Mr. Chris Breen:** Chair, I—

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Breen. You are respectfully dismissed. Thank you.

**Mr. Chris Breen:** Thank you, Mr. Chair. A reminder to the Clerk that I was asked for one specific letter. I’m happy to leave it behind.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We are obliged.

Mr. Tabuns, you’re welcome to enter your motion into the record. Just before you do so, I’d invite you to specify—what do you mean by “reversed”?



**Mr. Peter Tabuns:** I'll read the motion, and then I will give you clarity, Mr. Chair.

I move that the order of appearance for the three witnesses scheduled for Tuesday, April 30, 2013, be reversed. That would mean that the witness who's currently going to be at the end of the day come at the beginning of the day; the witness at the beginning of the day comes at the end of the day.

**The Chair (Mr. Shafiq Qaadri):** All right. So just for clarity, as it stands, the original list is: Liberal, PC, NDP, morning and afternoon Tuesday, and Mr. Tabuns wants it NDP, PC, Liberal. Understood?

**Mr. Bob Delaney:** Is the motion in order?

**The Chair (Mr. Shafiq Qaadri):** The motion is in order.

**Mr. Bob Delaney:** Why?

**The Chair (Mr. Shafiq Qaadri):** I appreciate what your objection is, Mr. Delaney, but I'm informed that the motion is in order.

**Mr. Bob Delaney:** Chair, the question was: Why is the motion in order?

**The Chair (Mr. Shafiq Qaadri):** Why is the motion in order? All right. Well, I will attempt to access the philosophy behind the motion if you'll give me a moment.

This is scheduling of the same witnesses as opposed to a dictation of change of witness. It's just a matter of scheduling, and apparently we could have agreed to this without a motion, off the record.

**Mr. Bob Delaney:** A five-minute recess, Chair?

**The Chair (Mr. Shafiq Qaadri):** A five-minute recess.

*The committee recessed from 1014 to 1025.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. Let's expedite this, if possible. We have a motion before the floor by Mr. Tabuns. As I had

mentioned earlier, its effect—for Tuesday, April 30—is to go from Liberal, PC, NDP to NDP, PC, Liberal. As I've already ruled, the motion is in order because it's an issue of scheduling. It's on the same day. It's a matter of order only. It's an equal number of witnesses. To date, we still do not know who these witnesses are. Net effect, it would just be as if we were ruling, for example, to move from Tuesday to Wednesday or sit during the break etc. So, that is the underpinning philosophy behind the ruling.

The motion is now before the floor. Are there any further comments before we go to the vote?

**Mr. Bob Delaney:** Chair, I think this is just unnecessary gamesmanship.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Any further commentary?

**Mr. Peter Tabuns:** Go to vote.

**The Chair (Mr. Shafiq Qaadri):** Those in favour of Mr. Tabuns's motion with reference to April 30, vote in favour, please. All opposed? Motion carries.

We have one more issue before the committee. The lead members of each caucus have been given this particular secrecy disclosure form with reference to Infrastructure Ontario—100 pages. They will be required to sign, date and put their name on it if they are to walk out of this room with Infrastructure Ontario documents, and I understand that's been received by each caucus—most—

**Mr. Peter Tabuns:** Well, no. To be clear, I've seen the package. We are discussing whether or not we will take those documents under those conditions.

**The Chair (Mr. Shafiq Qaadri):** Thank you. If there's no further business before this committee, the committee is adjourned till next week.

*The committee adjourned at 1027.*





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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 30 April 2013

# Journal des débats (Hansard)

Mardi 30 avril 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 30 April 2013

Mardi 30 avril 2013

*The committee met at 0831 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy to order. I would invite our first witness to please be seated: Mr. Colin Andersen, chief executive officer of the Ontario Power Authority.

Just before I begin the swearing in through the Clerk, I'll just announce for the committee three areas that we need to deal with. First is just an announcement in terms of information. The third witness for today, after the Premier, Mary Anne DeMonte-Whelan, who I understand was the PC candidate in Etobicoke Centre, accepted to present at 4 p.m. yesterday and declined to present at 7:45 a.m. this morning. So we do not have a third witness, but perhaps the second witness will offer enough testimony to keep us occupied.

Also, Infrastructure Ontario and OPA documents are to be considered—whether we're going to see them privately, release them to the public and so on. We'll deal with that after our testimony—likely in the afternoon.

## ONTARIO POWER AUTHORITY

**The Chair (Mr. Shafiq Qaadri):** With that, I would invite Mr. Andersen, CEO of OPA, to be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Colin Andersen:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Andersen. I invite you to begin your five-minute opening address.

**Mr. Colin Andersen:** My name is Colin Andersen. I have been chief executive officer of the OPA since September 2008. I began my career in the public service in 1986, spending most of my time in the Ministry of Finance. I also held positions in the Ministries of Health and Revenue, as well as in Cabinet Office, when each of the three parties was in power. Immediately prior to joining the OPA, I was Deputy Minister of Finance, where I oversaw the production of five provincial budgets.

I have a master's degree in economics from the University of Toronto and an honours BA from the University of Calgary.

At the outset, I would like to say that I have been privileged over the years to work with some really stellar public servants, particularly including the staff at the OPA. They are well-qualified and experienced professionals who take their responsibilities seriously and who have worked hard for Ontarians to cost-effectively secure their electricity needs. I also want to acknowledge the fine folks at finance, for whom this is a special week.

In my opening remarks, I will present a very brief overview of the costs of moving the Oakville plant to Napanee. I can't do justice to the numbers in five minutes, but I'll be happy to answer your questions.

I will also not have time to read into the record my views about the relationship of the OPA with government and some of the issues around document disclosure, but they are included in the text of my remarks, which you have.

The OPA was created in early 2005 to provide expertise in three areas: conservation, procurement and planning.

The relocation of the Mississauga and Oakville plants are two of the most complex files that I have worked on. They entailed a complicated mix of legal, commercial, economic, community and electricity system issues, many of them not seen in this province before.

In the end, the relocations avoided expensive litigation and delivered plants that will meet Ontario's electricity needs for decades, and at commercially reasonable prices.

Projects of this size and complexity have many moving parts, and their costs evolve over time. Estimates are often very dependent on methodology, assumptions and judgment calls. These include assumptions about events that are far in the future: for example, the state of the economy in 2018, the price of gas in 2022 and the industrial demand in southwestern Ontario in 2029. They might also depend on site-specific issues that cannot be known until detailed engineering work is completed. To some extent, it's like a Polaroid picture that takes 20 years to develop. Some parts become clear pretty quickly—turbine costs and monies expended on sunk costs are good examples; some come into focus later.

Clarity of language and common definitions are important to an accurate understanding of the compon-



ents of costs. Sometimes the same exact words, such as “total cost” and “buckets of costs,” have been used to describe different things. I have also seen people shift from using a gross cost number to a net cost number, a nominal number to a net present value number and monies paid to date all in the same conversation.

As part of our due diligence, we have secured an independent third party to review the costs of relocating the Oakville plant. Dealing with uncertainty is an inevitable part of the business of contracting for power. Uncertainty and the use of judgment are why experts with in-depth knowledge are used.

NERA Economic Consulting, a leading global economic and financial consulting firm, was engaged to do this work. The firm chose their own methodology for their review, and their report is in the package I distributed to you today under tab 2.

On page 8 of the NERA report, they provide a summary of costs that includes site-specific and system elements, such as transmission losses and the cost of buying replacement power. They also identify savings, and their current calculation of the bottom line cost to move Oakville to Napanee is \$241 million. I have also included in your package a copy of the OPA’s most recent estimate. Our figures today, using our own methodology, put that cost at \$310 million. I’d invite you to look at tabs 4 and 5 for that.

I guarantee that these numbers will continue to evolve and be debated as more information becomes available and assumptions, discount rates and planning scenarios are developed further.

To keep within the five-minute allotment, that concludes my opening presentation. I urge you to consider the written submission that follows in the text that has been distributed, and I look forward to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Andersen. Just before we proceed, I’ll once again announce on behalf of the committee that I received a letter on behalf of the leader of Her Majesty’s official opposition agreeing to testify before this committee—Tim Hudak.

Mr. Tabuns?

**Mr. Peter Tabuns:** When?

**The Chair (Mr. Shafiq Qaadri):** That is probably to be determined still.

**Mr. Peter Tabuns:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you, Mr. Andersen, for being here this morning. Just out of curiosity, when was this report commissioned?

**Mr. Colin Andersen:** We commissioned it about a month ago, I guess. Four to six weeks ago, something like that.

**Mr. Peter Tabuns:** What prompted you to do this?

**Mr. Colin Andersen:** Well, obviously there’s a lot of scrutiny with regard to the costs that were developing, and we wanted—I wanted to collect as much information as we could to help us as we were preparing our own

estimates, and so, roughly a month or so, decided that it would be a good thing to get these folks in to do this. We’ve been using experts along the way, but I thought at that point in time it would be good to get some more information.

**Mr. Peter Tabuns:** And is there any substantial difference in the approach to calculation and reporting from that used by the Auditor General?

**Mr. Colin Andersen:** No, although you would see that there are a few elements that are more pertinent to the Oakville plant than were pertinent to the Mississauga plant. For example, we’ve included estimates of replacement power. So, in many cases the methodology was similar. NERA decided on their own which methodology they would use, and you’ll see that they’ve largely covered off the same components.

**Mr. Peter Tabuns:** Okay. Now, you’ve just given us two numbers, \$241 million—

**Mr. Colin Andersen:** That’s right.

**Mr. Peter Tabuns:** Tell me again what that number is? That’s the NERA calculation?

**Mr. Colin Andersen:** NERA is—theirs is the \$241 million. If you look on page 8 of their report, you’ll see that there’s a disaggregation of the components of that, and that’s under tab 2. Then the OPA equivalent calculation—if you look under tab 4, there’s an accordion fold sheet. You might want to just pull that out and then we can—I can walk you through a comparison of the components, if you want, or—

**Mr. Peter Tabuns:** Yes. If you could do that briefly, I would appreciate that.

**Mr. Colin Andersen:** Okay. It’s actually easier for me to go off our sheet, the Ontario—

**Mr. Peter Tabuns:** That’s fine.

**Mr. Colin Andersen:** —because that’s ours. So that’s the one that’s under tab 4 with the fold-out sheet.

**Mr. Peter Tabuns:** Yes.

**Mr. Colin Andersen:** Starting from the top, there’s some numbers that you’ll see that you’re probably quite familiar with, the turbine costs and the sunk costs. In our sheet, those are \$250 million. In the NERA sheet it’s \$254 million, so pretty close.

The site-related costs, the transmission connection and the gas connection: Those total \$47 million. If you look at the NERA sheet, they’ve got an estimate of about—where was the number?—\$42 million for that. So that’s the connection and gas connection—so, relatively close. They call it reimbursable capital costs, though.

0840

**Mr. Peter Tabuns:** Yes.

**Mr. Colin Andersen:** The gas delivery and management: Their number is 350, so they’ve got a lower number than we do. This is a number that we still have a range for. We’ve taken the upper end of the range in ours, so we’re a little more conservative.

**Mr. Peter Tabuns:** Yes.

**Mr. Colin Andersen:** The bulk transmission, the 90 number: Their equivalent number is 88, so that’s trans-



Higher line losses: They've got 24, whereas we have 32.

They do not have an explicit number broken out for turbine efficiency. These turbines have a capability that means that they have a fast-start capability, but it makes them a little less efficient when they operate over the longer term, so there's a cost associated with that.

The next two numbers that we have, 195 and 539: The equivalent components that NERA used—they actually added those together, so it's 670. We have 195 and 539; they have one number of 670 together. They've put both of those things in.

Replacement power: We have an estimate of 215, based on our latest work. They put that roughly at 153. This is the item that I was talking about that is more relevant to Oakville than it was to Greenfield South.

**Mr. Peter Tabuns:** Right.

**Mr. Colin Andersen:** They elected not to take savings in the last item, where we've got \$50 million, so in the end, their numbers are about \$60 million apart. I guess I would say we would have a more conservative estimate, that being a higher estimate of the relocation costs.

**Mr. Peter Tabuns:** Okay. I'm going to take some time, probably when you're done, to try and absorb all of that.

**Mr. Colin Andersen:** It's a lot to absorb.

**Mr. Peter Tabuns:** But I guess one of the things that's most striking, first off, is that the government has been using the \$40-million sunk cost for a long time, and it appears, even by NERA's more conservative assumptions, that that figure bears no relationship to the reality here.

**Mr. Colin Andersen:** Well, I actually think we're the more conservative in our estimates than NERA. But it's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized, if you will, at that point in time.

What was key in the sentence you just used was the \$40 million in sunk costs, because that's exactly what it describes. It's the sunk costs, which were acknowledged all along as only being a portion of the costs. There were other elements that were noted.

When you go through our chart again, you see that the second category of items—site-related costs—each and every one of those was identified in the MOU, but none of them had a number attached to them at that point in time. To some extent, I've said they were noted as TDB. It meant that we couldn't provide a detailed number at the time, because more work had to be done—detailed engineering work, in many cases—on those.

**Mr. Peter Tabuns:** As you may understand, the government has consistently given the impression that \$40 million was the number and there weren't others.

**Mr. Colin Andersen:** Well, you know, I think language is key on this—

**Mr. Peter Tabuns:** It is indeed.

**Mr. Colin Andersen:** —and \$40 million—talking about it as sunk costs is an accurate depiction.

**Mr. Peter Tabuns:** Accurate, but overly economical with the picture before us.

**Mr. Colin Andersen:** I'm an economist, so "overly economical"—I don't know if that's—anyway, yes, it did talk about a very specific portion of the costs, and other elements of those had to be developed over time.

**Mr. Peter Tabuns:** So would the ministry have been aware of these other cost categories?

**Mr. Colin Andersen:** Well, as signatories to the MOU, certainly they were aware of the other categories. Once the decision was made to move the plant out of the Toronto area, it was well understood that there were going to be system costs associated with that as well, above and beyond those related to the site-specific costs.

**Mr. Peter Tabuns:** And were they aware of the scale of these cost buckets?

**Mr. Colin Andersen:** To some extent. For some of them, we had early estimates fairly early on. The transmission numbers that are on this chart—you may recall that, early on in some of the materials that we've disclosed, there was an estimate of about \$200 million associated with that item. As time has moved along, we've been able to come up with alternative ideas that have resulted in a lower estimate, actually. So that estimate has actually come down. That one would have been well understood.

The others: It would have been orders of magnitude, maybe. In some cases, these costs have come in higher than we originally anticipated. I think it's important to also take into consideration the savings categories that were on the pages there as well. We're continuing to do our estimates on those as well. All of the elements would have been generally understood, yes.

**Mr. Peter Tabuns:** So when ministers sign off on these documents—sign through the province, on the MOU—

**Mr. Colin Andersen:** The deputy minister signs, but the minister ultimately approved the element—the entire deal.

**Mr. Peter Tabuns:** And had a sense of the scale of what Ontario was being committed to.

**Mr. Colin Andersen:** Certainly knew that there were significant costs that were to come later. He and I had a discussion, right at the outset, with regard to the fact that these were going to be complicated discussions. We were talking on the Thursday right before things wrapped up on Monday, and I had said to him, "If we're going to get this all concluded by Sunday or Monday morning, there will be things we won't have had time to do the due diligence and TransCanada won't, so there will be loose ends that will have to be sorted out." I said, "For sure, the numbers are going to change. We also have to prepare for the possibility that—we could probably only get an agreement in principle, which ultimately resulted in an MOU, but the deal itself could fall apart once everybody had a chance to do more of the detailed work." There was a reason why there was a three-month separation between signing the MOU and ultimately the contract in December.



**Mr. Peter Tabuns:** So by the time the contract was signed three months later, did you have a firmer sense of the numbers?

**Mr. Colin Andersen:** On some. The GD&M costs that were there—the gas delivery and management—are numbers that continue to evolve, and they're subject to a lot of things.

Just last week, the National Energy Board came down with a ruling. We're not actually sure whether that's going to increase or decrease these estimates. Circumstances happen as you move along.

What we tried to do was mitigate the risks associated with those. The idea behind some of these elements was: We were taking on responsibility for them if they were directly related to the relocation, and if it was something that wasn't really in TransCanada's ability to deal with. But we always tried to tie it to either further detailed work that could be verified by somebody: a mutually agreed-upon gas management plan and energy rates that are at the OEB. Essentially, it's a cost pass-through; something like that.

In some cases, we got some reflection in the NRR, which is the monthly payment that they're paid. Where we could, we tried to mitigate some of those uncertainties by tying them to things. But as I said, some of these things are quite contingent on events that haven't happened and won't happen for 20 years. Gas demand, how the economy goes, what the electricity demand is: All of those things feed into the delivery costs and the management costs and things like that.

**Mr. Peter Tabuns:** But just to go back, though: By the time the final contract was signed, it would have been apparent to you and to the government that \$40 million was not going to cover all of the relocation costs?

**Mr. Colin Andersen:** We always knew that \$40 million was the sunk costs portion and that there were other elements to that. Those were identified in the MOU. At the time of the signing of the contract, some of those might have started to materialize in a little bit more of a form numerically—when I talked about the Polaroid developing, for example. Some of them, like I say, are still developing even today.

**Mr. Peter Tabuns:** On another line of questioning: How were you informed that the Oakville gas plant was going to be cancelled? Were you told before or after June 2010?

0850

**Mr. Colin Andersen:** June 2010—well, we were working on the RFP process, so the RFQ, the RFP, keeping in close contact with the ministry at each step of the way. Then we awarded the contract, and then—I think the ministers changed probably around that time as well. Once the contract was signed, I think it's safe to say that the community opposition ramped up even more, and so, with the new minister, he asked questions about where are we at and what things. The decisions to actually cancel the plant were taken, as far as I know, in late September, early October, but we were getting questions, from the outset I would say, with regard to possibilities,

off ramps, what situation are we in—those kinds of things.

**Mr. Peter Tabuns:** Were you aware that the Premier's office was negotiating around you with TransCanada?

**Mr. Colin Andersen:** Well, we were aware that they were having meetings with others; I mean, it's not an uncommon practice. We were in contact with TransCanada as our contract counterparty as well, and so people could see that there was discussion starting to have about, "Okay, well, what might another possibility be then, moving forward with this plant in this location?"

**Mr. Peter Tabuns:** Why was the decision made to split costs of the relocation between rate base and tax base?

**Mr. Colin Andersen:** Well, again, at the outset on both of the plants I had talked with my board about the fact that this decision was made by the government and which of the costs were appropriate for the ratepayer to pick up versus which were the costs that were appropriate for the taxpayer to pay because of the fact that this was in fact a government decision not to go forward with the plant. So, early on, I had talked to Minister Bentley in the one case about the fact that while we couldn't necessarily decide on the split between the ratepayer and taxpayer, this was a principle that I felt—and that my board agreed with me—was an important one to have a discussion about later.

There are different ways to look at this, because one plant was already partially constructed, so it had a lot of money in the ground already. The other one—you know, there were less costs that had been provided, but there had been those discussions with the Premier's office about keeping them whole, and so that could have some ramifications for the ultimate value down the road.

**Mr. Peter Tabuns:** Let me go back to that point you just made. These discussions with the Premier's office about making them whole: Was it your understanding that the Premier's office was holding out to TransCanada that, "We will make you whole; you will not suffer from this deal"?

**Mr. Colin Andersen:** Yeah, well, there was a lot of discussion right around the period—the October 5 to 7 period. So they came back and told us that there had been these discussions, that the decision had been made and an announcement was actually scheduled on the 7th or 8th—I can't remember the exact date that the plant was going to be cancelled—and that one of the conditions that TransCanada had for supporting that announcement was that it needed to get something in writing. So the Premier's office handed that over to us to put it in writing because we were the legal counterparty. There are numerous drafts of these letters evolved over time, and then ultimately I signed and sent a letter on the 7th.

**Mr. Peter Tabuns:** So you were effectively told that you had to meet this condition of keeping them whole?

**Mr. Colin Andersen:** No, I wouldn't put it that way. I would say that that was an expectation that this announcement was going to go forward, that TransCanada



would be supportive of it, and understandably TransCanada would want to know—to get something in writing. The understanding was that everybody was interested in moving forward with a negotiation to relocate the plant. That was the idea right from the get-go. However, it being a legal document, when you get the lawyers involved, they always are thinking about, “Okay, what if everybody’s intending for outcome A, which is to relocate a plant, but what happens if those negotiations aren’t successful, and how do we make sure our interests are protected?” That goes for the TransCanada lawyers as well as for the OPA lawyers. It did involve a pretty extensive back-and-forth on the drafting of those letters.

**Mr. Peter Tabuns:** When you dealt with deputy ministers and ministers, were you forthcoming about the risks and costs that you saw from the courses of action they were taking?

**Mr. Colin Andersen:** Are you talking about something specific? That is generally my practice, yes.

**Mr. Peter Tabuns:** Sorry. Talk about Oakville first, and then I can ask—

**Mr. Colin Andersen:** Sure.

**Mr. Peter Tabuns:** You weren’t holding things back from them.

**Mr. Colin Andersen:** Oh, no, I wasn’t holding things back. In many cases, I was saying that we don’t have access to all the information that I would be comfortable with in moving forward at this point in time. In many cases, I did ask for more time and was hopeful of access to more information, but they had timing concerns of their own—in some cases, deadlines that they set for us. Deadlines can sometimes be very helpful in negotiations. Certainly I would feel that I was forthcoming on the risks, yes.

**Mr. Peter Tabuns:** So you let them know risks and costs.

**Mr. Colin Andersen:** That’s right, to the extent that we could, because we couldn’t always attach a specific number to some of these kinds of things.

**Mr. Peter Tabuns:** And you did the same with the Mississauga plant.

**Mr. Colin Andersen:** That’s right, yes.

**Mr. Peter Tabuns:** When the former Minister of Energy signed off on Mississauga and reported that \$180 million was the cost, you were aware that you’d spent closer to \$245 million or more?

**Mr. Colin Andersen:** This is going to be a—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

**Mr. Colin Andersen:** We need more time on that one.

**The Chair (Mr. Shafiq Qaadri):** Just before I pass the floor to the government side, I’d just like to acknowledge the presence of Shannon Dean, the senior parliamentary counsel of the Legislative Assembly of Alberta, from Edmonton, who’s here to see the extraordinary work of the justice policy committee of Ontario.

Mr. Del Duca, 20 minutes.

**Mr. Steven Del Duca:** Thanks very much, Mr. Chair. Thank you, Mr. Andersen, for being here with us today. I

want to begin by talking to you about a letter that I believe our Clerk is passing out right now. It’s a letter that you wrote to this committee requesting an additional 30 minutes for your opening statement back on April 24, and I believe you asked for that so that you could provide a detailed walk-through of the cost components. I think you might also know that our government put forward a motion last week to have you testify on April 24—to allow you longer than the standard five minutes for your opening remarks.

We are committed to being open and transparent. The Minister of Energy asked the committee to invite you to testify as soon as possible to share your estimates on longer-term costs and savings associated with the Oakville relocation. Unfortunately—and, I guess, surprisingly, from my perspective—the opposition voted that motion down.

Would you agree that your request for a longer opening statement was in large part because of the technical and complex nature of the calculations and the desire you had to provide us with as complete a picture, or as comprehensive a picture, or an opportunity for explanation? Would you agree with that?

**Mr. Colin Andersen:** Yes, I would certainly agree with that. It’s probably the former Deputy Minister of Finance in me coming out. A lot of attention has been paid to these numbers. There’s a lot of complexity behind them. A lot of these numbers individually have detailed spreadsheets that support them. The auditor, when they were in to do their review—it took them four or five months to get up to speed on some of these things. The negotiations themselves around these plants took two years for the Oakville plant, just because of the complexity of them.

I was concerned that I wasn’t going to be able to do the numbers justice. Given all the attention that gets paid to them, I had offered to provide a more detailed walk-through of them, but I’m in the hands of the committee.

**Mr. Steven Del Duca:** Right. Thank you.

You’ve mentioned both in your opening and again right now that you’re a former Deputy Minister of Finance, former Deputy Minister of Revenue, and I think you mentioned at the outset that you have a master’s degree in economics, so it’s fairly safe to say that you’re pretty good with numbers and accounting?

**Mr. Colin Andersen:** Yes. Well, I try.

**Mr. Steven Del Duca:** Okay, great. So the auditor—I’m sure you know this; I know you know this—the Auditor General has come out with his estimates on Mississauga, and his numbers are different from those which were released by the OPA. I know you’ve spoken to this already, but I just want to make sure that it’s extremely clear for all of us: This does kind of speak to the complexity of the situation, that these are not simple calculations, estimates; it’s incredibly complex, this entire process. Is that fair?

0900

**Mr. Colin Andersen:** That’s right. We agree with the auditor’s assessment on all areas except for one, and it’s



a respectful disagreement. He acknowledged it in his report. We had good discussions, including me personally, with him about the one element, which is how much of the savings associated with the plant going forward later should be recognized. But all the other components of the report we agreed with.

**Mr. Steven Del Duca:** So with respect specifically to the Oakville costs, in terms of the costs associated with relocating that plant, we know that the government did rely on the OPA's approach when it announced the original costing figures. I'd like to table the OPA's backgrounder from September 24, which I think is being passed out right now, which clearly does state that the OPA was paying for the cost of the gas turbines as well as the gas management, but that there would also be a significant savings from a lower net revenue requirement. Do you stand by the information that you provided to the public in the September 24 OPA document?

**Mr. Colin Andersen:** Yes, we stand by that. Again, there are key phrases that are in here in the descriptions, right? And it talks about items that are repurposed; there are items that cannot be reused. This focuses on the costs that are very specific to the gas plant itself, the site-specific, so it doesn't take into consideration some of the other elements with regard to the transmission upgrades and some of those kinds of things, although those were in the public domain and well understood—that those kinds of costs would be there.

Some of the other costs associated with the savings and the replacement power costs: Some of those kinds of things we've developed over time. So this was a depiction of the sunk costs associated with the project at that point in time.

**Mr. Steven Del Duca:** And the numbers you have provided to the committee this morning with respect to Oakville: Those are your latest, most recent estimates, is that correct?

**Mr. Colin Andersen:** That's right. The other thing I should point out is that this is a backgrounder that accompanied the full release of the contract and the MOU that had all of the other elements, and I think it's safe to say that—because of some of the confusion that came out after the Greenfield, we had felt that putting out as much of the deals themselves was going to be a good practice, even though they're very complicated legal documents, but putting—it's not a common practice to actually do that, but we had said from the outset—I had said from the outset with TransCanada, "You're not going to like this, but be prepared. I'm going to insist that we put all of this stuff out when the deal is signed in all its detail."

**Mr. Steven Del Duca:** I think you said this in your opening statement, but is it fair to say that these numbers continue to be in a bit of a state of flux?

**Mr. Colin Andersen:** Yes. When all is said and done, probably in 2038—that's the only time when you're finally going to be able to have an estimate, and I would venture a guess that even at that point in time, you could still debate some of the numbers based on your assump-

tions about not only events that did happen but events that ultimately didn't happen, because that becomes your comparison point, in some cases, for these costs.

**The Chair (Mr. Shafiq Qadri):** For all members of the committee, I invite our guests, the press and anyone in this room to allow the witness to continue his presentation and minimize the background chatter. Thank you.

**Mr. Steven Del Duca:** Thank you, Mr. Chair.

In our package today, the committee received a document dated March 20, which we have here as well, separately, which we'll table with the Clerk, but it was in the package today from what I understand. In that March 20 document from the OPA, it states that the estimates for the cost for the Oakville relocation to be between \$33 million and \$136 million. You might already have it, but if not, you're going to get it in a second. I just wanted to clarify. Did you provide that document to the Ministry of Energy?

**Mr. Colin Andersen:** This is a document—it wasn't in the package that I gave you today. This was an estimate that we had provided to the Ministry of Energy on the date that's noted on that particular page, so about a month ago. And you'll see, when you compare that chart to the chart that I've provided today, that there are elements that we've since determined that we think are appropriate to include in the mix. I can walk you through those, if you'd like.

**Mr. Steven Del Duca:** On that point, though, this is a document from only four weeks ago, and you just mentioned a second ago that you've included some things, that things are moving around, that this entire calculation or estimate process is something that continues to move and be in a state of flux. But at that time four weeks ago, according to the March 20 document, you believed the relocation cost could potentially be as low as \$33 million.

Again, not to repeat myself, but I think it's important: The fact that this moves the way that it does over such a short period of time really does sort of reinforce the notion about how complex this entire process is. It's not straightforward; it's not simple.

**Mr. Colin Andersen:** Exactly. It's very complicated, very complex.

**Mr. Steven Del Duca:** Looking back to the September 24 OPA backgrounder, it's clear, I think, that beyond the \$40-million sunk costs, there were going to be some additional costs and also some additional savings. On that score, it is fair to say again that the numbers are changing regularly. If so, why is that the case?

**Mr. Colin Andersen:** The numbers are developing, or they're evolving, and that's because you make your estimates based on the information that you have at the time. When the decision was made to move the plant from one location to the other, we endeavoured to use as much of the old plant as possible in the new location. But it did mean, in many cases, that significant parts of it had to be reconfigured. Engineers had to get involved to redesign. The connection costs to the electricity system, to the water system—a lot of those things had to be developed.



The Lennox site was really—we were really coming down to the choice of that particular site versus alternatives that were under consideration right around the time of the MOU. TransCanada hadn't had time to do their on-site due diligence with OPG, for example. They hadn't had the opportunity to talk to the gas distributors in the area, the franchise folks. So those were going to be discussions that were going to actually take a whole committee of people to develop a gas management plan. These aren't the kinds of things that can be developed in a few days, let alone a few months. Those kinds of things had to follow suit from the MOU.

**Mr. Steven Del Duca:** Thank you for that. So we have varying estimates that have been produced. We've talked a lot about the complexity of the calculations, and even today, we have a new number from the OPA. We also have the NERA report, which shows, as you pointed out, that there's still a bit of a differential there, depending on the approach and everything else. This is a very complex situation.

From your perspective, given all of that, do you believe that it makes sense for us to wait for the Auditor General's report on Oakville?

**Mr. Colin Andersen:** What do you mean by "wait for the Auditor General's report"?

**Mr. Steven Del Duca:** Well, wait before jumping to any conclusions. We know the Auditor General's report is coming. Would it not make sense—I mean, for example, in your February press conference, you did state that "it's probably best to ... see ... what" the AG's "report has to say." Would that not be the most responsible thing?

**Mr. Colin Andersen:** I was talking about the Greenfield plant, and the auditor's report was about to come out, and there's a lot of scrutiny and debate about the numbers. Opinions can change over time, because some of these numbers involve judgment calls and debates back and forth. I think that's exactly why you want to rely on experts—people who have lots of experience in these areas.

It's why we chose NERA. They do this kind of work all around the world for all kinds of different, very well-regarded bodies. They have their opinions about some of this. The OPA can add its more in-depth knowledge of the Ontario experience, and we can add our own value to that with regard to whether we want some of these estimates to be a little more conservative or not reflect in the realities that are here.

And then, of course, the auditor will also take a perspective. I think when he was doing the Greenfield one, he talked about the fact that when he was originally asked to do the Greenfield audit, he was asked to look at it from the taxpayer perspective, but he decided that a broader approach, to add in the ratepayer perspective, was the way that he wanted to go, and that's what he did.

0910

**Mr. Steven Del Duca:** Thank you for that.

Moving to the Mississauga costs—the Mississauga relocation—we know that the government relied on the

OPA's approach when it announced its original costing figures on Mississauga. What I've just tabled is an email that you sent to the Minister of Energy's chief of staff and the deputy minister back on July 13, 2012, three days after Minister Bentley announced the agreement to relocate the Mississauga plant to Lambton.

The email states:

"As discussed previously we were relying on the OPA to provide the accurate and complete calculations of relocation costs. The relocation costs and the breakdown that were provided is what we are assuming is still correct.

"Can you pls confirm and double check the calculation to ensure that [the] 180 remains accurate."

You replied:

"The OPA stands by the \$180m figure, which reflects monies expended. It reflects costs as we know them."

Would you agree that the government depended on the OPA to provide cost details on the Mississauga relocation?

**Mr. Colin Andersen:** Yes, they did. We provided the government with a lot of information right around the announcement. As I said before, these are complicated numbers to explain. For Greenfield, it was further complicated by the fact that this was a plant that was partially constructed already. So there were monies that went out the door, some of which could be repurposed and some of which could not. We provided the government with our information about expenditures to date related to the plant, which were in fact about \$325 million—I'm getting a little bit into what Mr. Tabuns was asking about.

The information we had provided to the ministry at the time was pretty detailed accounting, so to speak: a lot of gross expenditures, repurposed stuff netted out, and then it talked about net costs that could not be repurposed. The feedback we got from the ministry was that this was too complicated—very detailed—and that they wanted to take a crack at providing a simpler way of putting out these numbers. So we worked with them on that. Some of the elements that we had suggested be in the backgrounders ultimately didn't end up there, but we do stand behind, and continue to stand behind, the \$180-million figure that is there, because it does reflect the net costs that cannot be repurposed in the plant.

That's a pretty lengthy description. Unfortunately, it sometimes gets short-formed by people to the words "total costs," which isn't the best way to actually describe that. But you don't always get the chance to give the full, lengthy description of what we're talking about, because you need a spreadsheet to go along with it.

**Mr. Steven Del Duca:** Right. In the Auditor General's report on Mississauga, the OPA states that "adding in system-related costs for bulk transmission and line losses largely accounts for the difference in relocation costs reported in the audit."

Similarly, the report states that the OPA "respectfully disagrees with the audit's conclusion that only recognizes 75% of the savings for deferred NRR payments."



I think you've said up until now; I just want to make sure that it's clear: There was a different approach on the part of the OPA—between the OPA and the auditor—with respect to estimating both costs and savings.

**Mr. Colin Andersen:** Yes, for everything except for that one area, where we respectfully disagreed with the auditor. Again, it was a judgment call, so it was only on that one element that we felt we had a disagreement.

**Mr. Steven Del Duca:** In terms of the complexity of the negotiations—we've said over and over again, and you've made sure we understood clearly how complex this entire process was—I think it would be fair to say that one of the things that added to the complexity was the need to maintain some kind of positive relationship with the proponents, because if those positive relationships weren't maintained, there was certainly a threat of litigation. Is that correct?

**Mr. Colin Andersen:** Yes. We were thinking about the contract holders we were dealing with, but also very top-of-mind for myself and my board was the impact this could have on future contract deliberations, not only for the kinds of contracts the OPA is looking at, but the kinds of contracts that other parts of the government, Infrastructure Ontario and those—you want to have investor confidence in this province.

Governments have the right to change their minds, and in some cases we expect them to do so, but I think it's also important that when those circumstances happen, everybody sees that people are treated fairly, that the contract holders are treated fairly. We were looking to get value for ratepayers as well. So those are all considerations very specific to these bodies, because TransCanada is an important part of the electricity mix in this province—this isn't the only contract that we had with them—and likewise, it was important to keep a good relationship with Greenfield, because we knew that at least for the next 20 years, we'd have an ongoing relationship with them.

**Mr. Steven Del Duca:** Thank you very much for that.

With respect to the whole course of the negotiations that took place, I would imagine there were probably a number of back-and-forth situations, like any other negotiation. So far in this process, the opposition has been very interested in a supposed \$712-million offer made from the OPA to TransCanada on April 21. When Chris Breen was here and was asked about this offer, he replied: "The offer that I'm aware of is Colin Andersen's letter to Alex Pourbaix proposing that we go ahead and build a peaking natural gas-fired plant in the Kitchener-Waterloo area." So in fact, the supposed \$712-million offer wasn't some sort of blank cheque the OPA was prepared to write to TransCanada, with zero power produced, but rather, it included the value of a new power plant; is that correct?

**Mr. Colin Andersen:** That's right. Over the time, we were talking about a number of different plants, in some cases, in different locations; in some cases, it was actually a package of plants or other things that could essentially get TransCanada equivalent value of one sort

or another. In the end, a like-for-like project was what we were striving for, because that was most easily—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair.

Mr. Andersen, Mr. Del Duca handed a document out that talks about the OPA giving the government the number of \$180 million and sticking to it. The government blames you. The government has thrown you under the bus. They've said, "We trusted the OPA's number." How do you feel about the government sticking to that?

**Mr. Colin Andersen:** I think what they've said is that they relied on OPA numbers, and that's true. We did provide them with the numbers. That is what you would expect. We provided them with a lot of numbers. The numbers are very complicated, and they can't be distilled down into easy-to-communicate elements. There are a number of different, quite technical, terms here: gross numbers, net numbers, things that can be repurposed, things that can't—

**Mr. Victor Fedeli:** Ratepayer, taxpayer.

**Mr. Colin Andersen:** Ratepayer, taxpayer. There are a number of different perspectives that you can take when you're looking at these numbers. As I said in my statement, I have actually heard people using the same words when they're actually talking about different things, sometimes without even realizing it.

**Mr. Victor Fedeli:** So you also say you disagree with the auditor, that you stand behind the \$180 million, even after the Auditor General says it's \$275 million, and you talk about it basically being the NRR calculation, where they view it one way and you view it another. You're sticking with the—

**Mr. Colin Andersen:** No. What I said was—

**Mr. Victor Fedeli:** But you said you stand behind the \$180 million, even after—

**Mr. Colin Andersen:** What I said was that we agree with the auditor on everything except for one component—

**Mr. Victor Fedeli:** So you disagree with the auditor?

**Mr. Colin Andersen:** —and the one component is the amount of savings that were recognized. He recognized 75% of the savings; we felt it was appropriate to recognize 100%. So when all is said and done, we would have said our number would have been roughly in the \$250-million zone, when you take into consideration the transmission losses and the rest.

**Mr. Victor Fedeli:** But not \$180 million?

**Mr. Colin Andersen:** We still stand behind the \$180 million number of costs that can't be repurposed. Some of those numbers evolved over time, but they're still pretty close. The auditor ascertained that those pieces of it are still pretty much the same, but he did also add in, from the ratepayer perspective, the system costs. We agree with those costs. In many cases, those are ones—

**Mr. Victor Fedeli:** So you and the auditor disagree basically on the savings area?

**Mr. Colin Andersen:** That's right; just the one element.



**Mr. Victor Fedeli:** That's where you and the auditor disagree. Okay.

**Mr. Colin Andersen:** Just the one element.

**Mr. Victor Fedeli:** So let's go to your document that you supplied today with the Oakville relocation costs, spreadsheet number 4.

I just want to talk about the costs for a second.

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You've got "Payments made to TransCanada" that total \$250 million. You've got "Future site-related costs," which are "Transmission connection," the "Gas Delivery & Management," \$453 million. You've got future costs on the transmission line losses, \$176 million, and you've got "Replacement power" from 2017-18 of \$215 million.

So what you're telling us here is that the total cost to relocate Oakville is \$1.1 billion, less any savings. Is that accurate?

**Mr. Colin Andersen:** Before you take into consideration some of the savings—

**Mr. Victor Fedeli:** We'll get to the savings in a minute.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, might you allow the witness to answer?

**Mr. Victor Fedeli:** Well, I've only got 20 minutes, Chair.

**Mr. Colin Andersen:** Our best estimate today is that the relocation cost is \$310 million.

**Mr. Victor Fedeli:** Let me just rephrase, then: \$250 million, plus \$453 million, plus \$176 million, plus \$215 million. Does that equal costs of approximately \$1.1 billion that you've outlined in here?

**Mr. Colin Andersen:** To get to the total relocation cost you do have to add in those savings.

**Mr. Victor Fedeli:** I'm asking a simple question, a simple math question: \$1.1 billion, less any savings, is that accurate?

**Mr. Colin Andersen:** Well those numbers do add up, but you do need to take into consideration the savings.

**Mr. Victor Fedeli:** They add up to what? Those numbers add up to what?

**Mr. Colin Andersen:** I'm not going to—

**Mr. Victor Fedeli:** Add four numbers?

**Mr. Colin Andersen:** —do the math right here on the spot.

**Mr. Victor Fedeli:** I'll add them for you. It's \$1.1 billion, less any savings. So let's talk about the savings, then. You—

**Mr. Colin Andersen:** It's the phrase "less any savings" that is actually muddling things a bit, but yes, \$310 million is the number that we feel is the appropriate number to talk about today.

**Mr. Victor Fedeli:** You and the auditor disagree on savings a lot of times. On page 22 of the auditor's report—you estimate savings of NRR and the auditor estimates different savings of NRR. The auditor's is the number that we, along with the former energy minister—he says he respects and will live with the numbers from the auditor. Let me quote from him. He goes on to talk about you formulate it and how he formulates it: "Given

these uncertainties, we have included estimated savings of about three-quarters of" the number of the OPA.

**Mr. Colin Andersen:** That's right.

**Mr. Victor Fedeli:** That's correct.

**Mr. Colin Andersen:** He included three quarters of the savings. We felt it was more appropriate to include the whole amount.

**Mr. Victor Fedeli:** So it's three quarters. He believes three quarters of the number.

On page 23: He's now on the Greenfield savings where this would be money that the company gets to keep. He says you underestimate that. He says, "We estimate that Greenfield will save \$65 million.... The OPA told us it was aware of these savings" but they estimated it at only \$36 million. Your number and the auditor's number again are almost off by 100% in that particular case. Do you disagree with the auditor?

**Mr. Colin Andersen:** Well, that number that you're talking about actually was monies that were left with Greenfield, so it doesn't factor into the calculation.

**Mr. Victor Fedeli:** What it factors into is the—

**Mr. Colin Andersen:** It was a factor in the negotiation. There are a number of gives and takes; not everybody gets everything that they want. We were basing our assumptions on the best information that we had at the time. We assumed, for that one in particular, that Greenfield had undertaken a particular financing arrangement for that. It turned out to not be the case, and the auditor—

**Mr. Victor Fedeli:** At the end of the day, the auditor found it important enough to put in his report as "Other benefits to Greenfield." It doesn't come into the cost to the government, the taxpayer or the ratepayer, but it was a saving to Greenfield. He says your estimates are off almost by 100%. He picks 75%, or three quarters of one estimate, and he picks 100% of the other.

**Mr. Colin Andersen:** Well, you know, I would say that it's important. You have to look at all of these elements together—

**Mr. Victor Fedeli:** Well, let's look at one more element.

**Mr. Colin Andersen:** You can't just pick one item in isolation. You have to look at all of them.

**Mr. Victor Fedeli:** Well, it's the two that he talks about. You've only got four items in your estimate here that are savings. We're going to talk about the validity of those savings.

**Mr. Colin Andersen:** We have accepted the auditor's position on a number of these. In some cases our estimates were a little bit above; in some cases they were below. When all is said and done, really, the only substantive area that we feel where we disagreed with the auditor was on the recognition of the savings—

**Mr. Victor Fedeli:** Of savings, so let's talk about the savings that—

**Mr. Colin Andersen:** —so our estimates would be roughly in line with his as well.

**Mr. Victor Fedeli:** So you would admit, then, that your savings numbers are speculative?



**Mr. Colin Andersen:** Well, for areas where we know and can verify, sometimes by an auditor and sometimes by an independent engineer, we've got a really good sense of what those numbers are, and no, they're not speculative. For others, there are—

**Mr. Victor Fedeli:** So the auditor says you're off by 100% on one, and he picked 75% of your other number. Let's look at document number 2, down at the bottom here.

**Mr. Colin Andersen:** There are judgment calls, yes.

**Mr. Victor Fedeli:** This is a document where—well, we'll get to that a little later, actually. Maybe we'll go to document 8 here. We'll go to document 8, the fourth paragraph. "They have indicated"—

**Mr. Colin Andersen:** Sorry. Which is the document that you're—

**Mr. Victor Fedeli:** PC doc 8; it's the second-last sheet. This is a letter from the Ministry of the Attorney General: "They have indicated that the problem is that Colin Andersen at OPA"—this is John Kelly from the Attorney General's ministry—"is being very confrontational and that he and whoever is advising him doesn't know anything about the proper calculation of damages."

Would you characterize that as accurate?

**Mr. Colin Andersen:** No.

**Mr. Victor Fedeli:** Okay.

**Mr. Colin Andersen:** I would say that in any negotiation, particularly one that is taking longer than people were hoping it would take, it's not surprising that people on either side of a negotiation would take very strong positions.

**Mr. Victor Fedeli:** They were on your side, by the way.

**Mr. Colin Andersen:** TransCanada equally took—

**Mr. Victor Fedeli:** That's your team. Team Liberal.

**Mr. Colin Andersen:**—very strong positions. The people on my team—we relied on outside experts as well to help us—

**Mr. Victor Fedeli:** Look, I've only got 20 minutes, Mr. Andersen. I want to get to your savings here.

**Mr. Colin Andersen:**—so we do have lots of information that we rely on.

**Mr. Victor Fedeli:** Let's get to the savings that you list here. So it's \$1.1 billion in cost, less any savings. The first savings you show are for the reduced monthly payments of the NRR. The NRR, it says here, was reduced from \$17,277 to \$15,200.

Under sworn testimony from JoAnne Butler, she says the average NRR was under \$13,000. Would you acknowledge that? How can a savings from \$17,000 to \$15,000 be a savings when the average is \$13,000? Would you care to take one minute to talk about that?

**Mr. Colin Andersen:** Well, you're talking about—

**Mr. Victor Fedeli:** I'll give you one minute on that.

**Mr. Colin Andersen:** You're talking about a number of things there. The \$13,000 number that she was referring to is the average NRR for our gas fleet, contracts of which were engaged over a long period of time. Some of the older contracts came in at a much lower

number. The more recent contracts, that are reflecting current market conditions, come in at higher numbers. So the average is roughly the number that she talked about.

**Mr. Victor Fedeli:** Okay. Thank you. I want—

**Mr. Colin Andersen:** The \$17,000 to the \$15,000 is very specific to the Oakville plant itself—

**Mr. Victor Fedeli:** I can see that.

**Mr. Colin Andersen:**—and there is a savings associated with that.

**Mr. Victor Fedeli:** There would be a savings to go from \$17,000 to \$15,000. Sadly, the average is \$13,000.

The next number is a \$539-million saving. That's savings from starting payments later.

**Mr. Colin Andersen:** Right.

**Mr. Victor Fedeli:** So this is \$539 million. This is where the auditor and you are likely going to tangle some swords—

**Mr. Colin Andersen:** That remains to be seen.

**Mr. Victor Fedeli:**—as well as that \$195 million.

So it says here, "This ... assumes that the contracted commercial operation date ... for OGS"—the Oakville generating station—"would have occurred. If a later COD is assumed, then the savings are reduced, but the estimated cost of replacement power may also be reduced."

You're claiming it's \$1.1 billion of costs, less any savings, and here's \$539 million you're going to save from starting the payments later. Can you take one minute and explain that?

**Mr. Colin Andersen:** A good starting point is the contract that we had in hand that said the contract was going to come in place in 2014. As previous people in front of this committee have talked about, everybody on both sides of the contract was moving forward to meet their obligations. The government had a number of different tools at its disposal to consider, whether litigation, legislation or otherwise.

Once the government made the decision to relocate the plant, though, a lot of what we're talking about here becomes a bit speculative, because we're talking about futures that were no longer going to happen, and it will continue to be a matter of debate.

For me, going back to a legal contract that we had, that had specific milestones, is a legitimate starting point. The very real fact that the new plant is going to come into existence five years later—there is a time period there where we will not be spending money.

However, in our judgment, we also feel that for the last two years, 2017 and 2018, we are going to have to go out and buy replacement power services. We didn't have to do that for Greenfield. We do feel that we're going to have to do it for Oakville. Those are also going to be significant costs, and we've reflected those in our estimates today.

**Mr. Victor Fedeli:** But given that logic—you know, I'm going to save a quarter of a million dollars today because I'm not going to go out and buy a Ferrari before lunch. That's a quarter-billion; I'm feeling pretty good that I'm saving that.



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**Mr. Colin Andersen:** It's not the same thing, though.

**Mr. Victor Fedeli:** Let's go to your future potential savings: \$374 million. There's no explanation to it—just future potential savings of \$374 million.

**Mr. Colin Andersen:** That's just a subtotal for the category.

**Mr. Victor Fedeli:** So now we've got \$1.1-billion cost, less any savings—savings of \$195 million from NRR—we know the auditor does not agree with your valuation methodology—and you've got \$539 million—\$50 million, actually, was the number I was looking at, in estimated replacement power. So you've got—

**Mr. Colin Andersen:** I actually disagree with that. The auditor did, in fact, recognize this element in his report—

**Mr. Victor Fedeli:** Yes, three quarters of your estimated—

**Mr. Colin Andersen:** He did recognize this methodology. Where we had a disagreement is in the amount. This element—in fact, the way I've laid out the numbers today, I tried as much as possible to put them in the same kind of categories that the auditor used for ease of comparison. The one that you're talking about: Very specifically, the auditor also had that reflected in the Greenfield. We just disagreed, because it's a judgment call, on the proportion of the savings that were recognized.

**Mr. Victor Fedeli:** We'll have to wait and see, then, what the auditor has to say about your cost estimates, your assumptions and your future potential savings. So at the moment, we're—

**Mr. Colin Andersen:** That's the point of having an audit done.

**Mr. Victor Fedeli:** —we're at \$1.1 billion to cancel the Oakville plant, less any savings.

**Mr. Colin Andersen:** As I said in my opening statement, a lot of these numbers are specific; they can be verified by independent engineers. Roughly, the top portions—

**Mr. Victor Fedeli:** We'll look forward to that.

**Mr. Colin Andersen:** —of the pages: That's what they talk about. A lot of the rest of them are subject to assumptions about events that haven't happened yet and won't happen for another 20 years.

**Mr. Victor Fedeli:** Is the detailed design and engineering work done on the new Oakville plant?

**Mr. Colin Andersen:** Some of it, but not all of it. It continues right up until the time that the shovels go into the ground—and beyond, frankly.

**Mr. Victor Fedeli:** In JoAnne Butler's letter to this committee of April 9, which we all received, she says that detailed design and engineering work needs to be complete before some of these costs can be accurately quantified.

**Mr. Colin Andersen:** Yes.

**Mr. Victor Fedeli:** Do you agree?

**Mr. Colin Andersen:** Yes.

**Mr. Victor Fedeli:** Yet you are providing another set of numbers today.

**Mr. Colin Andersen:** We haven't provided the ranges that are associated with this, but, again—and it may not be a perfect analogy, but the Polaroid analogy: Some things start to become clearer as you move along and you get to do some of the detailed engineering work. I think it's a common practice that you start to get estimates that are plus or minus 25%, for example, and then you narrow those down as you get to the actual point where you've got shovels in the ground. So it is an evolving process. Numbers firm up over time.

**Mr. Victor Fedeli:** The auditor in his report didn't buy your savings projections for Mississauga, so why should we believe these now?

**Mr. Colin Andersen:** He recognized 75% of the savings that were there. That's a very significant component. We actually had discussions with him at the outset. He was thinking that maybe a lower percentage might be appropriate, and after we had discussions with him, we were able to say, "No, we think that there's another legitimate way to look at this," and he ultimately upped his number to 75%. We weren't able to get him all the way to 100%, although we feel strongly that 100%—and we still feel—we felt strongly enough to disagree with the auditor. You don't disagree with the auditor—you don't take that lightly.

**Mr. Victor Fedeli:** I see you don't disagree with him in that respect, except for the NRR, but he certainly disagrees with you on the Greenfield number by 100% and the NRR by 75%.

**Mr. Colin Andersen:** No, he disagreed with us on the Greenfield number by about \$19 million.

**Mr. Victor Fedeli:** By about 100%—

**Mr. Colin Andersen:** No, about \$19 million.

**Mr. Victor Fedeli:** I'm not going to get into—

**Mr. Colin Andersen:** Read our response and you'll see that that—

**Mr. Victor Fedeli:** It was \$63 million and \$65 million.

**Mr. Colin Andersen:** Nineteen million is the only area of disagreement that we had.

**Mr. Victor Fedeli:** Except for the—

**Mr. Colin Andersen:** When all is said and done, the total number.

**Mr. Victor Fedeli:** —benefits to Greenfield, where he calculated that off by about 100%.

Let me ask you: Who told you that the TransCanada deal was being cancelled?

**Mr. Colin Andersen:** I guess it would have been the chief of staff and the deputy minister at the time.

**Mr. Victor Fedeli:** What authority does the government have to cancel a contract that you have?

**Mr. Colin Andersen:** Once we have a contract, they don't have legal authority to tell us to cancel a contract, but they had made it very clear, through their commitments, their strong intent to have the plant relocated and, of course, they have a number of tools at their disposal including, ultimately, legislation. So it was very clear to us that this is where they wanted to go—

**Mr. Victor Fedeli:** So they had no legal authority—



**Mr. Colin Andersen:** We talked about it with our board and ultimately decided that it was in the interests of ratepayers to at least attempt to renegotiate the contract. Ultimately, that's what we were able to do.

**Mr. Victor Fedeli:** So they don't have any power under the Electricity Act or any other acts to tell you to cancel that power plant, yet you did it.

**Mr. Colin Andersen:** Once we sign the contract, their legal power to direct us goes away. However, we have a board and we talked about the fact that there was a very strong commitment on the part of the government and all three parties and the citizens in the area to have the plant relocated. We could have taken a number of courses of action, which is just, "Okay, fine, see you in court." But we felt that it was better for us to be the ones to go and work with our contract counterparty to renegotiate because we felt that was the fairest way to go.

**Mr. Victor Fedeli:** Did anybody on your board object to being told what to do? Did anybody on your board object to this?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Just a simple answer because I have one more question.

**Mr. Colin Andersen:** I think it's fair to say that once we've got a contract under way, people expect that we're going to proceed with that.

**Mr. Victor Fedeli:** So nobody on your board objected, then?

**Mr. Colin Andersen:** We had a good discussion about the realities that were now in front of us and ultimately decided that renegotiating was the way to go. I can't say we were happy about it, but we could understand the position that the—

**Mr. Victor Fedeli:** So moving the plant farther away—let me quote you from the National Post: "It would not be responsible to build a plant elsewhere and deliver its power to the southwest GTA because that would require building new high-voltage transmission lines, which would impact ... other communities and mean hundreds of millions of dollars in additional cost."

Did the province of Ontario, the Premier's office, understand that moving it to Napanee was going to cost hundreds of millions more?

**Mr. Colin Andersen:** At different points in time, there were different understandings, so certainly—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Just to advise: please, no flash photography. Cameras are welcome otherwise.

**Mr. Peter Tabuns:** This whole question of the cost of the Oakville plant. We always disputed the \$40-million figure because we didn't think it reflected a financial reality for that big a transaction. You can imagine why we would have difficulty with the government's position, because—and I'll quote Minister Bentley, October 3, 2012: "The memorandum of agreement speaks to the

cost. The memorandum of agreement and the result of the negotiations—very hard negotiations ... were concluded on Monday morning, and we know the cost of it is \$40 million." And that's what was given to us time after time after time. Never "\$40 million and there are undetermined costs that we'll be sorting out later"; "\$40 million and there are savings and costs." No. Forty million bucks.

I think you can understand why, when we see your number, eight times bigger than what the government has previously provided, yet to be audited—you know, their numbers, we're going to debate about. You can see why Ontario—

**Mr. Colin Andersen:** I think—

**Mr. Peter Tabuns:** Sorry—Ontario's been given the sense that it's \$40 million.

**Mr. Colin Andersen:** Well, I think Minister Bentley did talk when he was here about what he was referring to at the time when he was talking about that; \$40 million is the sunk costs. There were other costs—

**Mr. Peter Tabuns:** He didn't use those words.

**Mr. Colin Andersen:** —that go along with this. You know, \$40 million plus all of the other elements that are in the MOU, numbers which have yet to be determined. That's the reason why, from the outset, we had said, given that there are these numbers which are still TBDs, let's put out the MOU in its entirety so people understand. I appreciate that that is not an easy way to communicate the entire picture, but it was there.

**Mr. Peter Tabuns:** Well, when we ask in the Legislature for an answer, that's what we get. When we ask you—or former Minister Bentley under oath—we get a lot more detail. Frankly, Ontario has been given the impression consistently that it was \$40 million and we have had that debate in the House. You've given me—

**Mr. Colin Andersen:** I've tried to be clear in the language that I use.

**Mr. Peter Tabuns:** You've given useful information today, and I am appreciative. It's clear even your numbers show a cost eight times higher than the government has been using.

But I want to go back to Mississauga for a moment. There was the \$180 million, and you say another \$80 million was spent that could be repurposed.

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**Mr. Colin Andersen:** That's right.

**Mr. Peter Tabuns:** So what did Ontario get back for that \$80 million?

**Mr. Colin Andersen:** Not everything that the monies that had been expended on the Mississauga site could be moved over. But there are things that can be repurposed, such as the gas turbines themselves, so you do move them over.

**Mr. Peter Tabuns:** No, actually, that isn't my question.

**Mr. Colin Andersen:** Sorry.

**Mr. Peter Tabuns:** I followed this with Mr. Bentley. We put out \$260 million—

**Mr. Colin Andersen:** So \$325 million in costs, ultimately, of which some of it could be repurposed.



**Mr. Peter Tabuns:** That's right.

**Mr. Colin Andersen:** So the net cost—

**Mr. Peter Tabuns:** So what did we get back? When I read the Auditor General's report, what we got was a reduction in the cost of that contract that was worth about \$22 million. So, in fact, we put out an awful lot of cash, and we got a very small amount back.

**Mr. Colin Andersen:** Well, I think some of that goes along with the fact that this particular plant was one third of the way constructed—intense pressure to get the construction of that plant stopped and then relocate elsewhere. As the auditor acknowledged, we were in difficult circumstances with regard to negotiating the change, so you have to take into consideration the fact that there were costs that had already been expended on an existing plant. We're now a few years later on, and we're negotiating under not only the current commercial circumstances, but the fact that the plant was being relocated.

**Mr. Peter Tabuns:** I understand all those countervailing pressures. I listened to the auditor; I've heard your testimony. You had spent \$260 million, not \$180 million, and you were going to get back a small refund on that. We were given the impression it was \$180 million on that plant. No, even then you knew it was \$260 million.

**Mr. Colin Andersen:** Well, we were repurposing as much of that equipment as possible.

**Mr. Peter Tabuns:** It didn't matter. You had put the money out, and what you got—

**Mr. Colin Andersen:** Well, it reflects—yes, I mean, it reflects the fact that the plant was one third of the way constructed. Those monies could not be reused elsewhere, and then we had to renegotiate elsewhere, and we were under difficult circumstances for doing that renegotiation. Even the auditor acknowledged that we got the best deal that we could under the circumstances.

**Mr. Peter Tabuns:** That isn't the question here. We were told \$180 million; you had spent \$260 million. You didn't get the savings. We were out of pocket, and you could have told us. The minister could have told us.

**Mr. Colin Andersen:** Again, it goes back to some of the complexities of explaining some of these numbers: the gross and the net and some of that kind of thing, right? So there were monies that went out the door; some of that we got back. It was further complicated by the fact that there was a financier involved, so trying to explain all the cash flows for these.

When all is said and done, ultimately, we were able to relocate the plants. They're going to provide good service. We feel that they are at commercially reasonable prices, albeit we're paying more than we otherwise would have if the government hadn't made the decision to relocate the plant. That's the reality that we are in. I think we got the best outcome that we could have.

**Mr. Peter Tabuns:** Mr. Andersen, you've been a good witness, but you're starting to meander, and I'd like to focus you back.

Oakville: Was it always the position of the OPA that the power needs for Oakville could be met by transmission or generation solutions?

**Mr. Colin Andersen:** There's always more than one way. Our preference was to go with the gas plant. I continue to feel strongly that maybe we're putting too many eggs in the transmission basket in the Toronto area, and I would prefer to see generation, because it provides a lot of things that transmission doesn't.

**Mr. Peter Tabuns:** Okay. One of the things that happened in Oakville that was interesting to us, talking to Chris Breen and talking to others who have been here, is that the Oakville plant, the TransCanada project, was facing these huge barriers that appeared to be surmountable only by the government taking regulatory and legal action and overruling Oakville. That wasn't done. But as Mr. Breen noted in his testimony most recently, that was done with northern York region. Who made the decision to overrule northern York region in the imposition of the plant in the Holland Marsh?

**Mr. Colin Andersen:** Ultimately the government did. The circumstances in that part were very different than in Oakville, because northern York region was either on the brink or I think it actually passed the point where it was meeting reliability standards. So they were much more in need of a very immediate solution than the circumstances that we found ourselves in in Oakville.

**Mr. Peter Tabuns:** Out of curiosity, who drove the rewriting—who drove the overrule? Which minister was it? Which chief of staff was it?

**Mr. Colin Andersen:** It would have ended up being an overall government decision because—I guess it would have been Minister Smitherman at the time. Sometimes I lose track of which person was around.

At that time, we would have said, "This plant is really needed. Here's what it's going to take," and then it would depend on which particular act was the one that would make that move forward. If it was the Planning Act, then that would necessarily involve the Minister of Municipal Affairs and the rest of cabinet, so that would have gone forward, ultimately, as a cabinet decision.

**Mr. Peter Tabuns:** Did the OPA drive that?

**Mr. Colin Andersen:** The OPA continued to provide advice that we wanted to see this plant go forward because it was very much needed, and we would identify ways that we thought could go forward. Ultimately, this was the one that was chosen to get the plant across the finish line.

**Mr. Peter Tabuns:** Going back to the question of allocating the cost between tax and rate base, were you involved in a very sharp debate with the government? I assume you wanted to keep it off the rate base and they wanted to keep it off the tax base?

**Mr. Colin Andersen:** We wanted to have the appropriate allocation. This all did stem back to a government decision. At the beginning, we weren't sure what the split should be, but, because it was a government decision, we felt that the taxpayer should actually take some of that responsibility. The stuff that was associated with electrons—we thought, "Well, maybe that's a legitimate portion for the ratepayer."

**Mr. Peter Tabuns:** Did the government always try to push it as much as possible on to the rate base?



**Mr. Colin Andersen:** No, I wouldn't say that. We agreed from the outset to park this discussion for later. We weren't going to decide on it right at the time, but I—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Del Duca.

**Mr. Steven Del Duca:** I want to begin these final 10 minutes by talking a little bit about what would have happened if some of the contracts had just been ripped up, but before I get to that, I want to ask for one clarification.

In the first round of questioning, I think it was clear to everyone here in the room that Mr. Fedeli was trying to kind of separate out the savings from the Oakville agreement, but I think we would all agree that what he's actually doing is fairly misleading, because the savings are very much a part of the agreement. Is that—

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca, I invite you to use more parliamentary language.

**Mr. Steven Del Duca:** —that what he was doing was attempting to confuse the matter. The savings are very much—

**Mr. Victor Fedeli:** No confusion here.

**Mr. Steven Del Duca:** Well, I'm asking Mr. Andersen just to clarify that the savings that we talk about are very much a part of the agreement in Oakville.

**Mr. Colin Andersen:** I think you need to take all of the items into consideration when you're talking about this, yes.

**Mr. Steven Del Duca:** Thank you for helping us to end the confusion.

If the OPA had ripped up both the Mississauga and Oakville contracts, do you believe that the ultimate cost would have been higher and there would have been less benefit to the energy system?

**Mr. Colin Andersen:** If the contracts had been mutually terminated—or, not been mutually terminated, that would have exposed us to litigation, so we could have been in court and ultimately cutting a pretty big cheque and not getting electrons back, and we felt strongly that that would have had ramifications on not only our current contract holders but the faith of future investors in applying to any of our future RFPs.

**Mr. Steven Del Duca:** So, from your perspective, you believe the OPA balanced your responsibility to the ratepayers with the responsibility to provide reliable energy for the system. Is that correct?

**Mr. Colin Andersen:** Yes. We think that we got a good balance in respecting both being fair as well as getting value for ratepayers.

**Mr. Steven Del Duca:** Great. I'd like to move to a bit of a discussion around document disclosure. I want to speak to you a little bit about the document search process in response to the estimates committee request for correspondence relating to the two gas plant relocations.

At your February press conference, the OPA's chair, Mr. Hinds, said that the OPA is in the business of producing power, not documents. What I take from that

is that the document search process was quite a departure in terms of the normal activities that are engaged in by the OPA. Would you agree with that?

**Mr. Colin Andersen:** I would very much agree that it was very new to us—a request of this scope and this nature—and we had to learn as we went along with regard to that, yes.

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**Mr. Steven Del Duca:** So because it's outside the scope of your normal work, because it was a massive undertaking, and because you mentioned that you were learning as you went along, is it fair to say that certain mistakes were made?

**Mr. Colin Andersen:** There were definitely shortcomings from the start, but I think what is also important to know is that we continued to work on this, and it was our own due diligence, our own asking questions about some of these things, that ultimately led us to realize that we needed to add more things to our disclosure. In some cases, when we discovered that we had made some mistakes, when we pointed out our mistakes to the government, they realized that they had also made some of those.

This was also new to the Ontario public service. You've heard this from many witnesses before, that this was—and the other thing that was important to us was we had conflicting, competing legal obligations. The information that we have that is commercially sensitive, that we're legally obligated not to disclose, that is privileged—we're in the middle of negotiations; we're thinking that potentially litigation is going to happen—absolutely respect the work of this committee, and it was always our intention to comply with the requests. We had made some suggestions about how some of this information could actually be disclosed or provided without being disclosed to the public and the media. It's happening in the context of very detailed negotiations that are going on at the same time.

Absolutely, we learned. We got experts in to help us, and we have new protocols now.

**Mr. Steven Del Duca:** So at that press conference, you were asked about the opposition's assessments that there had been some sort of orchestrated cover-up by the government, and Mr. Hinds responded at that time as follows: "I don't think 'cover up' is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us." That was the end of his quote.

Would you agree with Mr. Hinds's comments that there was no orchestrated cover-up, that best efforts were made on the part of the OPA?

**Mr. Colin Andersen:** Yes, we absolutely made best efforts. These were our decisions on what to put out.

**Mr. Steven Del Duca:** Your vice-president of communications, Kristin Jenkins, testified before this committee, and she confirmed that the OPA was responsible for your own document search and had final sign-off on what was provided to the Clerk. Would you agree?

**Mr. Colin Andersen:** Yes.



**Mr. Steven Del Duca:** Thank you very much. I want to spend—how much time, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Four minutes.

**Mr. Steven Del Duca:** I want to spend the rest of my time talking about the commercial sensitivity of this whole process. Many of the documents we're talking about were produced as a result of the motion, as I said earlier, passed at estimates in May 2012. At the time those requests were made, you were obviously aware that pretty sensitive commercial negotiations were ongoing with Eastern Power and TransCanada. Is that correct?

**Mr. Colin Andersen:** Yes, there were very detailed negotiations going on, for sure.

**Mr. Steven Del Duca:** You wrote to the committee on May 30, in fact, that in response to the motion—this is a quote from what you wrote—“The OPA respects the authority of the committee and its interest in receiving this information.”

You also had serious concerns about the release of the documents before the negotiations were finalized. The letter states: “The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without-prejudice negotiations. Such disclosure is likely to significantly prejudice the position of the OPA and the province in the ongoing, highly commercially sensitive negotiations and in the current litigation.”

Is it fair to say, then, that potentially releasing documents to the public at that point in time may have increased the cost to Ontarians, and that you and Minister Bentley had a responsibility to protect ratepayers while also being open and transparent?

**Mr. Colin Andersen:** We absolutely felt that there was a possibility of significant exposure, because it would have revealed our thinking in the negotiation side of things, and we felt that it would have weakened our case down the road, should this come to litigation. These are very detailed assessments that we were making, including of the risks and our assessment of how far we might be able to get at the table. The other side of the table would have loved, absolutely, to get this kind of information because it very much would have impacted how hard they would have fought back on some of these items. They would know exactly where to press their advantage.

**Mr. Steven Del Duca:** Generally speaking, the release of commercially sensitive information in your line of work would be—just generally speaking—a pretty grave concern for you.

**Mr. Colin Andersen:** A very, very grave concern. At the same time, we do respect the work of this committee, so we are trying to balance off those obligations, both of which we take very seriously.

**Mr. Steven Del Duca:** Thank you. Is there anything else you'd like to add to your statements today from your perspective?

**Mr. Colin Andersen:** I know that one of the things you've talked about in the past is the siting question and how things could be done differently in the future. It's an

area that I feel quite strongly about. I've long advocated that there be a better connection between land use planning and electricity infrastructure planning. I think it needs to be more explicitly embedded in the municipal infrastructure side of things.

The OPA does do work in our regional planning with regard to getting communities involved earlier in the planning process with regard to identifying needs and options that are coming in the future. I think that along with local involvement—you know, the choice of communities is important; communities should have choice in how their electricity needs are met. But I also think they should have some responsibility for that, and I don't think that's strong enough right now with regard to where we find ourselves.

Our regional plan—we've got six of them going in the province now, and we're looking at generation, transmission and distribution, working very closely with communities and LDCs. It's going well, but I think more needs to be done to draw a stronger link.

**Mr. Steven Del Duca:** Great. Thanks for your answers. Thanks for being here today.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much.

In Ms. Butler's testimony, she states repeatedly, “The OPA has been very specific that the \$40 million were sunk costs.... The memorandum of understanding, which the government was a party to, also indicated that there were going to be additional costs.”

She goes on to say, “Well, the government was a party and signed the memorandum of understanding, so they were aware of what was in the memorandum of understanding.”

She further says, when asked about the \$40 million, “They knew that. That was part of the memorandum of understanding, yes.... I can't comment on how they choose to communicate the numbers.”

She was asked about why the government continues to stick to \$40 million when they know it's higher, and she repeated seven different times that the government knew that \$40 million was only sunk costs, and yet they continued to communicate \$40 million as the total cost. She says, “I can't comment on how they choose to communicate the numbers.... Again, they signed the memorandum; they knew that we had other costs coming: gas interconnection, electricity interconnection etc.... The OPA has been very specific that the \$40 million were sunk costs....” She finalizes with, “So, the costs can be bucketed, as you've started out—yes, there were sunk costs. Yes, there were costs to the transmission system, to upgrade the transmission system, because the plants were moved to a new location. There were other costs that were very project-specific,” and she goes on to say, “There were other costs....”

Now, her follow-up letter said, “plus there's going to be some savings coming.”

But at the end of the day, why would the government continue to put a \$40-million number when they knew it was wrong?



**Mr. Colin Andersen:** I think JoAnne summed it up pretty well, and I agree with the way she's talked about that. I can't comment either on how the government chose to communicate. What I can talk about is the fact that we provided the numbers that were known; I was a signatory to the MOU as well. We released that document publicly in its entirety. It had all of the elements that were there in addition to the sunk costs. It just didn't have numbers attached to them because we didn't have that information at the time.

**Mr. Victor Fedeli:** So you knew there were other costs—other than the \$40 million sunk costs—presumably in the hundreds of millions?

**Mr. Colin Andersen:** We all knew that those were going to be there and that they were going to be significant, yes.

**Mr. Victor Fedeli:** The government knew that the total cost was more than \$40 million?

**Mr. Colin Andersen:** Absolutely, yes.

**Mr. Victor Fedeli:** Thank you.

Let's talk again about the documents that Mr. Del Duca first broached. Let me summarize what we've had here from your employee, Kristin Jenkins. She swears under oath—and there are documents here that back her up, that state that the Ministry of Energy came into the OPA and said, "We're going to be cute here"—I'm paraphrasing—"we're only going to give the words Mississauga and Oakville. We're going to have a very, very narrow definition."

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She has handwritten notes here that say, "Only correspondence, not slide decks that are attached to correspondence. If no key term in correspondence, then remove all." So she's very, very detailed with the handwritten notes about her meeting that documents were to be pulled out—any document that didn't say "Oakville" or "Mississauga" and a few others. But documents that stated "SWGTA," southwest GTA, were to be removed.

She has copied you on various pieces of correspondence, either Kristin or others. How would you characterize her testimony here?

**Mr. Colin Andersen:** She was under oath, and she gave a description of that meeting. She came back after that meeting and walked me through what was going on, and I asked a number of questions about that, specifically some of the items that you're talking about, so taking a narrow interpretation and some of those kinds of things. She also had outlined that they had gone through a page-flip of 700 pages—

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Colin Andersen:** Seven hundred pages of material at the meeting, so there didn't seem to be a lot of room for misinterpretation.

Another important part is that we had been asked to apply that approach, which at the time we thought was the one that the ministry was taking. It turned out to not be. We also—

**Mr. Victor Fedeli:** So can I just ask you—I have to interrupt; I apologize. So they said to you, "We want this

narrow interpretation," and you complied. You actually did temporarily remove several thousand documents. Then, when the document dump, as I call it, first came, oops, they didn't; they put everything in and left you out there with some documents removed. Is that an accurate characterization?

**Mr. Colin Andersen:** We didn't actually realize until October 2—

**Mr. Victor Fedeli:** But is that what happened?

**Mr. Colin Andersen:** We thought we were taking the same approach. I think even the deputy minister had thought that we were taking the approach, and it was only on October 2 when he and I realized that we weren't.

**Mr. Victor Fedeli:** What does that mean?

**Mr. Colin Andersen:** We relied on the fact that their legal branch—well, so—

**Mr. Victor Fedeli:** What does that mean that you weren't taking the same approach? You had documents removed, and they didn't. Is that accurate?

**Mr. Colin Andersen:** Let me use an example, maybe.

**Mr. Victor Fedeli:** Please.

**Mr. Colin Andersen:** The attachments issue that you talked about: The idea was that if the cover email didn't reference the plant, then the attachments, even if they did, would be excluded.

**Mr. Victor Fedeli:** What about "SWGTA"? Did you have documents removed?

**Mr. Colin Andersen:** And the acronym "SWGTA"—the narrow interpretation often means that you're being very specific to the wording that you have in front of you. SWGTA wasn't the wording.

**Mr. Victor Fedeli:** Okay.

**Mr. Colin Andersen:** Because of the time to get the documents back, I said, "Okay, they're taking a narrow approach. It sounds like they're taking the FOI approach. Their legal branch is coordinating, so let's go with that, but I'm going to"—in my own mind, I had said, "I'm going to raise this with the deputy," because a narrow interpretation—is that the way to go?

I raised those questions with the deputy about the attachments, and he had said to me, "Well, our legal branch is coordinating, so I presume things are okay." So he thought that if this is what the ministry was doing and that their legal branch had okayed it, then that was probably fine. I probably took too much assurance in that as well, and it was only through the fact that I continued to ask these questions, to say, "Well, is a narrow interpretation the right way to go?" Because that may be appropriate for FOI, but for a committee, I think a general interpretation is actually better—

**Mr. Victor Fedeli:** So at the end of the day, if I can just be a bit cavalier, they kind of hung you out to dry, because they sent you out taking documents away—intentionally removing documents: "SWGTA," "slide decks"—and they didn't do that.

**Mr. Colin Andersen:** I don't think there was any—nothing was done intentionally. A lot of this stuff was done inadvertently—

**Mr. Victor Fedeli:** By them, you mean? By the ministry?



**Mr. Colin Andersen:** Well, you know, it was always our intention to put everything out and—

**Mr. Victor Fedeli:** But why didn't you, then? Why did you not put everything out the first time?

**Mr. Colin Andersen:** Well, ultimately, we did.

**Mr. Victor Fedeli:** No, no. The first time.

**Mr. Colin Andersen:** We found our own mistakes—well, so—

**Mr. Victor Fedeli:** The 36,000 documents.

**Mr. Colin Andersen:** Yes, we were walked through this approach, and we thought it had the blessing of their legal branch—

**Mr. Victor Fedeli:** Well, not just the blessing; the instruction.

**Mr. Colin Andersen:** We turned our attention to a very intense—

**Mr. Victor Fedeli:** No, hang on, Mr. Andersen. Please—

**Mr. Colin Andersen:** —no, but a very intense period of negotiations followed.

**Mr. Victor Fedeli:** Go back. It wasn't with the blessing, it was under their instructions, according to Kristin Jenkins.

**Mr. Colin Andersen:** Well—

**Mr. Victor Fedeli:** Is that not accurate?

**Mr. Colin Andersen:** We were told—

**Mr. Victor Fedeli:** Did the Ministry of Energy tell you?

**Mr. Colin Andersen:** An employee of the Ministry of Energy described an approach that the ministry was taking.

**Mr. Victor Fedeli:** Which meant removing documents.

**Mr. Colin Andersen:** And then there was an expectation that we would apply the same approach. It had the effect of having a bunch of documents excluded.

**Mr. Victor Fedeli:** Well, it had the effect. There were—

**Mr. Colin Andersen:** Right. When all was said and done—

**Mr. Victor Fedeli:** —thousands of documents missing in the first dump.

**Mr. Colin Andersen:** When all was said and done, it was our decision.

**Mr. Victor Fedeli:** Yes.

**Mr. Colin Andersen:** It was our due diligence that ultimately led to the fact that we wanted to add more documents to our disclosure, so ultimately we did produce everything.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** In your talking points here, in the talking points that were provided, it says, "The government did not see the additional documents before we disclosed them," but according to you and others, they were in the room and taking documents out. "SWGTA, while searched, were left out of the disclosure. None of this was intentional." Was it not intentional to remove SWGTA?

**Mr. Colin Andersen:** We're talking about different times. After the first disclosure, we were not sharing—the ministry was not coming to have a look at our documents. We never had a look at their documents, either.

**Mr. Victor Fedeli:** No, I understand that. Yes or no: Did the government know it was more than \$40 million?

**Mr. Colin Andersen:** Yes, they knew that there were additional—

**Mr. Victor Fedeli:** And who knew it was more than \$40 million?

**Mr. Colin Andersen:** Everybody, including the minister.

**Mr. Victor Fedeli:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, and thank you, Mr. Andersen, for your presence and testimony on behalf of the OPA.

Before we recess committee until this afternoon, I just flagged for us a couple of issues. One, as you'll know, one member per caucus signed a receipt for confidential documents received from Infrastructure Ontario, except for Mr. Tabuns, thank you. As well, we have a number of confidential documents from the OPA. It's the committee's option, because these documents have been flagged as privileged and confidential and to be kept out of the public domain, but the committee needs to decide as a whole. Do we either release them to the public without regard to that instruction? Do we go into a viewing room or, as it were, a room with a view? Or do we go into closed session for it?

I'd appreciate if we'd come back with a firm answer on those at the conclusion of the second witness, who is, by the way, the Premier of Ontario.

Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, you're referring to the documents we were given last week.

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. Victor Fedeli:** Not the ones this morning.

**The Chair (Mr. Shafiq Qaadri):** No.

**Mr. Victor Fedeli:** Okay.

**The Chair (Mr. Shafiq Qaadri):** There are other documents on top of that.

**Mr. Victor Fedeli:** But the ones we received last week I've put in my lock-up, and that's—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Right. We received three packages from Ontario Power Authority, and there are two covering letters right now, because it's a big document with a stick, so we've got to decide what we want to do with it.

**The Chair (Mr. Shafiq Qaadri):** If there is no further business, the committee is recessed until this afternoon.

*The committee recessed from 1008 to 1458.*

HON. KATHLEEN WYNNE

**Le Président (M. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir la députée à l'Assemblée législative pour la circonscription de Don Valley West, la ministre de l'Agriculture et de l'Alimentation et notre 25<sup>e</sup>



première ministre, the Honourable Kathleen Wynne. I'd invite you, Premier, to be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Kathleen O. Wynne:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Madam Premier. As you're well aware of the protocol, you have five minutes to make your introductory remarks, followed by questions by rotation. I invite you respectfully to please begin now.

**Hon. Kathleen O. Wynne:** Thank you very much, and I'll read quite quickly because I have a number of things that I want to say. Thank you for inviting me here today.

As Premier, I have been very clear to the entire government, cabinet ministers, MPPs, the civil service and the OPA that we need to be open and transparent on all aspects of the relocation of the Mississauga and Oakville gas plants. To that end, I am pleased to have the opportunity to explain my involvement in these files.

I support the decisions to relocate these two gas plants. We listened to the residents of Mississauga and Oakville, and I understand that those decisions were also supported by the opposition parties, including their local members and candidates. The siting of these two plants failed to take into account the views of the community. Despite expert advice, despite an open procurement process and all the decision points along the way, the overall process failed. I have been very clear that I regret that we didn't have a different process in place.

As Premier, I have taken several important steps on these files. I have discussed this issue with the two opposition leaders and continue to be open to further conversations on this matter. I offered a select committee. When that was rejected, we broadened the mandate of the justice committee to consider all aspects of the relocations. I requested that the Auditor General expand his review to include the Oakville relocation. I asked the Liberal committee members to put forward a motion requesting all documents government-wide, but the opposition voted that down. And I've made it clear from day one that I would testify before this committee when called. I've been called, and here I am.

Let me now share with you my activities on these files, starting with Oakville. I was not involved in the decision to relocate the Oakville plant. Eight months after the decision was announced, on July 29, 2011, as Minister of Transportation, I, along with three other cabinet ministers, signed a cabinet minute. That minute authorized the Ministry of Energy to formalize settlement discussions with TransCanada and enter into an agreement under the Arbitration Act should negotiations fail. This was reported into cabinet on August 10, 2011, a meeting I also attended.

On October 3, 2012, I was present at a cabinet meeting which included a report back from treasury board on the negotiation mandate they had approved for the Trans-Canada negotiations.

With respect to the Mississauga relocation, I served as vice-chair of the 2011 Liberal election campaign. The issue of the Mississauga power plant and relocation was never raised at any of the meetings I attended. I learned about the campaign commitment from media reports.

After the election, I was appointed Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs. The new cabinet met on October 20, 2011, and there was a high-level discussion that the government was moving forward on the commitment to relocate the Mississauga plant.

On November 21, 2011, I, along with three other cabinet ministers, signed a cabinet minute approving a \$10-million settlement with Eastern Power regarding the outstanding litigation over the Keele Valley project. This settlement has been publicly disclosed as a cost associated with relocating the Mississauga power plant.

On November 24, 2011, I attended a cabinet meeting where the Minister of Energy provided a high-level update on the ongoing discussions between the OPA and Eastern Power. On May 30, 2012, I attended a cabinet meeting which included a report back on the approved treasury board negotiation mandate to settle with EIG, as well as a direction to the Ministry of Energy and the OPA to continue their settlement discussions with Greenfield. I was also present at a cabinet meeting on August 15, 2012, which included a report back on the treasury board order that approved \$180 million for the Greenfield South settlement and \$10 million for the Keele Valley settlement.

Since becoming Premier, I have had numerous conversations with members of my staff, the opposition, the public and the media about this issue.

Last month, staff from the office of the Minister of Energy told me:

- (1) the OPA's estimates kept changing;
- (2) at that time, the OPA's estimate for the cost to relocate Mississauga was \$271.4 million;
- (3) the OPA's estimate for the cost to relocate Oakville was between \$33 million and \$136 million.

I was provided with two OPA cost estimate documents, which I have tabled with the Clerk today, and you should have these.

I understand that the OPA appeared before this committee earlier today and has once again updated their numbers. I believe that the complexity and the fact that the OPA numbers keep changing justifies my decision to call in the auditor. We need to wait for the Auditor General's report.

In conclusion, let me state this: I'm pleased that the committee has convened for almost two months and has heard from over 20 witnesses. It is in everyone's interest that this issue is addressed and that we have a full understanding of how to ensure the appropriate placement of energy infrastructure so we get it done correctly



from the start. If we do not take the time to learn from the situations in Mississauga and Oakville, then we have failed those residents all over again, as well as all Ontarians.

Thank you very much, and I'm happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Premier Wynne, first, for your precision-time remarks as well as the gesture of appearing before this committee.

Mr. Fedeli, the floor is yours.

**Mr. Victor Fedeli:** Thank you very much, Chair.

Welcome, Premier.

**Hon. Kathleen O. Wynne:** Sorry, does everyone have—did people get these? Okay. Thank you.

**Mr. Victor Fedeli:** In your opening statement and on many occasions you have stated that the decision to cancel the gas plants was entirely political. What do you mean by that, Premier?

**Hon. Kathleen O. Wynne:** Thank you for that question, Mr. Fedeli. What I mean by that is that the decisions were made by politicians. There was advice that was given, there was siting expertise, but as I said in my statement, the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants. That's what I mean by political.

So, it's less, from my perspective, about political self-interest, because, as we know, everyone in the Legislature, all parties, agreed that these decisions needed to be taken. It is the reality that politicians made the decision as opposed to bureaucrats making the decision that I'm referring to.

**Mr. Victor Fedeli:** So by "political," you're not referring to the fact that these are seat-savers for five seats. You're saying it's a political decision because politicians made the decision.

**Hon. Kathleen O. Wynne:** Yes, that's what I mean.

**Mr. Victor Fedeli:** Were you going to lose any of those seats, in your estimation as a campaign chair?

**Hon. Kathleen O. Wynne:** I can't assess the risk there.

**Mr. Victor Fedeli:** Okay.

**Hon. Kathleen O. Wynne:** I know it was an issue in the communities, Mr. Fedeli. I mean, that's a reality; I think we all knew that. Over and over again in the Legislature, we've all talked about the reality that all of the candidates who were working in the community were addressing the reality and the statement that all the parties were interested in reversing these decisions. So I think it's safe to say that there was an understanding that the decision that had been made was not the right one for the community.

**Mr. Victor Fedeli:** When you made this, or when this political decision was made, did you have any idea of the scope of the cancellation dollars?

**Hon. Kathleen O. Wynne:** No.

**Mr. Victor Fedeli:** So what was your role, then, as Liberal co-chair?

**Hon. Kathleen O. Wynne:** As the vice-chair of the campaign—I'm glad you asked that question because, as you know from campaigns, there are many different roles. My role in the campaign was really to be out in the field, to be working with candidates. I went to un-held ridings; I did fundraisers; I was doing radio spots in small communities. That was what was asked of me as the vice-chair—as well as my own campaign in my own riding. That's not to say that I didn't go to campaign meetings; I did, but they were broader, higher-level campaign meetings. I was not involved in the day-to-day strategy of every nuance of the campaign.

**Mr. Victor Fedeli:** Would you have participated in any discussions whatsoever before or after the announcement to cancel the Mississauga gas plant?

**Hon. Kathleen O. Wynne:** As I said, I was not part of those discussions.

**Mr. Victor Fedeli:** Even after you read it in the media, you didn't ask anybody, "What does this mean?"

**Hon. Kathleen O. Wynne:** You know, I may have had incidental conversations, but I was not part of the strategy discussions around that decision, either before or after.

**Mr. Victor Fedeli:** As the campaign vice-chair, you would not have read that in the media, seen it, heard it in the media or saw it on television, heard it on the radio and thought, "Wow, I'd better talk to somebody about this. This is something that may affect the campaign."

**Hon. Kathleen O. Wynne:** Well, Mr. Fedeli, as you know, there's a lot going on in a campaign, and I can tell you I was not part of the decision-making process before or after that decision was made.

**Mr. Victor Fedeli:** So when you first heard of the Oakville—now I'm going to switch over to Oakville. When was the first time you heard about the cancellation of the Oakville plant?

**Hon. Kathleen O. Wynne:** Well, on October 7, 2010, Minister Duguid announced that the Oakville plant would not proceed, and that would have been—as for the rest of the government, that would have been the day that we would have heard that decision.

**Mr. Victor Fedeli:** So, from there, the first time—you said that the first time it came to cabinet was July 29, 2011, the cabinet meeting that you chaired?

**Hon. Kathleen O. Wynne:** Right.

**Mr. Victor Fedeli:** It had not been discussed in cabinet before that whatsoever? No mention of the cancellation of the Oakville gas plant for those months?

**Hon. Kathleen O. Wynne:** July 29 was the date that I signed that minute.

**Mr. Victor Fedeli:** So from the time it was announced in October to July 29, 2011, had it been discussed in cabinet whatsoever?

**Hon. Kathleen O. Wynne:** I was not part of any discussions of the issue. July 29 is when the discussion and the cabinet minute was signed.

**Mr. Victor Fedeli:** So you didn't hear any other discussions? You would say it was not discussed in cabinet, or you do not know if it was discussed in cabinet?



**Hon. Kathleen O. Wynne:** I believe it was not discussed in cabinet in that period of time.

**Mr. Victor Fedeli:** You were the chair of cabinet at that time. What's the role of the chair of cabinet?

**Hon. Kathleen O. Wynne:** The chair of cabinet chairs the cabinet meetings and is briefed on cabinet agendas before the meeting and basically runs the meeting.

**Mr. Victor Fedeli:** Okay. In that cabinet document—Clerk, are our exhibits distributed?

**Hon. Kathleen O. Wynne:** I don't have a document here.

**Mr. Victor Fedeli:** There's a doc 1 and—it's coming. It's the cabinet agenda, the one that you signed. In that discussion on July 29, 2011, would there have been any discussion at all about costs of the cancellation to TransCanada Energy?

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**Hon. Kathleen O. Wynne:** No. So this was a walk-around—

**Mr. Victor Fedeli:** Yes, we've had it here in this room many times.

**Hon. Kathleen O. Wynne:** There were no discussions of cost, as far as I can remember.

**Mr. Victor Fedeli:** So you have authorized the Ministry of Energy to enter into an agreement with TransCanada and to engage in settlement discussions with TransCanada, but there were no discussions whatsoever about an up-set limit of costs?

**Hon. Kathleen O. Wynne:** That was not part of the discussion. There was an understanding that this would be a negotiation and that, as I have said in Legislature many times, there's a cost associated with making a decision to reverse a decision like this.

**Mr. Victor Fedeli:** So, even though it says that they're authorized to enter into an agreement and they're to engage in a settlement discussion, there were no rules given, no upside financial limit.

**Hon. Kathleen O. Wynne:** I had no access to any of the financial parameters around that discussion.

**Mr. Victor Fedeli:** So the Ministry of Energy would not have been given any parameters either—just “go do your deal”?

**Hon. Kathleen O. Wynne:** I had no access to any numbers around the parameters of that discussion.

**Mr. Victor Fedeli:** On page 4 of 5, it talks about a settlement—

**Hon. Kathleen O. Wynne:** Sorry, I don't know what you're looking at.

**Mr. Victor Fedeli:** The third scanned page: a settlement in the form of replacement projects, asset sales or other commercial alternatives. What would that mean, then, if money wasn't discussed? What replacement projects would have been discussed?

**Hon. Kathleen O. Wynne:** Well, again, Mr. Fedeli, I wasn't part of these negotiations.

**Mr. Victor Fedeli:** I understand.

**Hon. Kathleen O. Wynne:** And I was not the Minister of Energy, so this was not a file in which I had

detailed knowledge. My understanding is that there would've been a negotiation to reverse the decision, that there would be a cost associated with that, and that we were as a cabinet implementing a decision that had been made by the government—a decision that all parties had agreed was necessary.

**Mr. Victor Fedeli:** So even though it talks about the fact that you're authorizing them to get into negotiations, develop a commercial alternative, there were no dollars talked there.

**Hon. Kathleen O. Wynne:** I didn't have access to financial—

**Mr. Victor Fedeli:** I'm just reading from the minutes.

**Hon. Kathleen O. Wynne:** Yes, and I didn't have access to any numbers in terms of those financial—

**Mr. Victor Fedeli:** So did you ask at all: “If we're getting into negotiations to develop a commercial alternative, how much is this going to cost?”

**Hon. Kathleen O. Wynne:** We understood that there was a negotiation that would have to occur. I didn't have access to any of those numbers.

**Mr. Victor Fedeli:** No idea about the cost.

**Hon. Kathleen O. Wynne:** A negotiation is a confidential process, so it would not have been that we would have had a discussion about those amounts at cabinet.

**Mr. Victor Fedeli:** So when was the full cost of cancelling the Oakville plant first presented to and discussed at cabinet?

**Hon. Kathleen O. Wynne:** Well, Mr. Fedeli, I think that the discussion about the cost of Oakville is an ongoing one. I think that's the reality, isn't it?

**Mr. Victor Fedeli:** So when was the first time any costs were discussed at cabinet?

**Hon. Kathleen O. Wynne:** One of the reasons that I asked the Auditor General to look at the Oakville situation is that I believe that there has been a lot of confusion about the numbers, that there have been different numbers presented at different times. I said to you today that I'm bringing in a document that I was given some days ago that suggested that the cost of the Oakville relocation was between \$33 million and \$136 million. The OPA appeared today at committee and there's another number. So that's why I believe I'm completely justified in having asked the Auditor General to look at the situation, and I really believe we need to wait for the Auditor General's report.

**Mr. Victor Fedeli:** So I'll ask the question again: What would have been the first number that was discussed in cabinet? This has been going on for several years. We can't have today being the first day that cabinet ever heard a number, when Colin Andersen has given a different testimony.

**Hon. Kathleen O. Wynne:** As I'm saying, there have been various numbers—

**Mr. Victor Fedeli:** So what are some of those numbers?

**Hon. Kathleen O. Wynne:** —one of my frustrations—

**Mr. Victor Fedeli:** What would some of them have been?



**Hon. Kathleen O. Wynne:** Well, I think the \$40-million number is the number that was used. It was the sunk costs, and that's the number that we understood was the number. But we also understood that there would be other costs associated with that, as I know you know from the memorandum of understanding.

**Mr. Victor Fedeli:** So when did you understand that? That's an important sentence. You understood there were other costs, but up to and including this morning, we've only heard about \$40 million. When did you understand that there were more costs than \$40 million?

**Hon. Kathleen O. Wynne:** So, Mr. Fedeli, the reality is that there have been various numbers that have been bandied about over the last number of weeks. I came into this office with a determination to make sure that the questions that you are asking, the questions that the NDP were asking and, quite frankly, the questions that our own members and the public were asking—that we would get to the bottom of those numbers.

Because we moved to broaden the mandate of the committee, you have had the opportunity to have the experts come to the table and answer those questions. The reality is that one of those experts came this morning with another number, a different number, so it's very important to me that we let the Auditor General look at the situation and assess what the full costs are.

**Mr. Victor Fedeli:** So you said there were other numbers presented other than the \$40 million, or you understood—

**Hon. Kathleen O. Wynne:** Well, I think you've heard—

**Mr. Victor Fedeli:** —that \$40 million was not the final number. When did you first hear a number different than \$40 million?

**Hon. Kathleen O. Wynne:** Well, I think you've heard the Minister of Energy—the current Minister of Energy—in the Legislature speak to the reality that there was a memorandum of understanding, that \$40 million was part of that number but that there were other numbers and other costs that could be considered part of the overall costs. From the beginning—and that MOU has been on the website—the understanding has been that the \$40 million was sunk costs, but again, it wasn't the Minister of Energy—

**Mr. Victor Fedeli:** But Premier—pardon me—Minister Bentley said in the Legislature and in his speeches, “Over the coming days and weeks, you will read and hear lots of numbers related to the cost of the plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million.” That's the number you and your government have stuck to.

My question was: When did you first understand that this number was not the final number—that there were going to be, and I quote from the OPA, “buckets of costs” to be added to this number? That's all I really want to know.

**Hon. Kathleen O. Wynne:** What I'm saying to you is that \$40 million was the cost that I was told and that our caucus and our government were told would be the cost associated with relocating the Oakville plant. That

number has changed, Mr. Fedeli; I'm frustrated about that and you're frustrated about that, as well you should be. That is why I asked the Auditor General, who is a financial expert, to look at the situation, to assess the costs and to give us a report. I am very eager to let him do his work.

**Mr. Victor Fedeli:** I asked Shelly Jamieson, the vice-president of OPA, what was known—we were talking about the sunk costs and the “buckets of costs.” She used the quote; she testified that she was aware of “buckets of costs” and that cabinet was aware of “buckets of costs.” I asked her if that was known, that there were more than just sunk costs, and she answered, “We knew exactly what we were going to cabinet to ask for”—oh, I'm sorry; I said Shelly Jamieson was with OPA. I'm sorry. Shelly Jamieson was cabinet secretary.

**Hon. Kathleen O. Wynne:** I know who Shelly Jamieson is.

**Mr. Victor Fedeli:** So, she said—I asked her if cabinet knew that there were more than \$40 million, and she said yes, “We knew exactly what we were going to cabinet to ask for.” How much was asked for, then, Premier?

**Hon. Kathleen O. Wynne:** I had no access to specific numbers beyond the \$40 million. I had no access to that in terms of specific other costs.

**Mr. Victor Fedeli:** Premier, I've got to be honest: When we had Craig MacLennan in here, and I asked him about a number, his answer was, “I do not know anything about that number, unless of course you have a document with my name on it. Then I can tell you about that number.”

We have sworn testimony from Colin Andersen of the OPA. This morning alone, when he provided a spreadsheet that showed that the cost of Oakville will be \$1.1 billion minus any savings—and he and the auditor are going to argue over the savings. They say the savings, which are highlighted in red, add up to about \$374 million. They bring it to \$310 million.

I asked him two questions: Did the government know that it was more than \$40 million? His answer was yes. I asked him the last question: Who in the government knew? He said, “Everybody.” Is that not accurate? Was he lying here this morning?

1520

**Hon. Kathleen O. Wynne:** So, Mr. Fedeli, I think it's quite clear from the argument that you've just put forward that it's very unclear what the costs are and it's very unclear which calculation you may be talking about—

**Mr. Victor Fedeli:** But it's more than \$40 million.

**Hon. Kathleen O. Wynne:** You've heard the current Minister of Energy say that there was a memorandum of understanding that was on a website that said that \$40 million were the sunk costs and that there would be other costs. But I had no access to what those costs would be, and quite frankly, we don't know what those costs will be. You're suggesting, with your \$1.1 billion or whatever you're—

**Mr. Victor Fedeli:** I'm not suggesting. That was the spreadsheet from—that was a spreadsheet this morning—



**Hon. Kathleen O. Wynne:** Well, no, but you're suggesting that one calculation would be—

**Mr. Victor Fedeli:** That's the total calculation.

**Hon. Kathleen O. Wynne:** —to calculate that number without the savings, and I would suggest that—

**Mr. Victor Fedeli:** Is it safe to say that we both agree that it's more than \$40 million? Is the total cost more than \$40 million, Premier?

**Hon. Kathleen O. Wynne:** Sorry. Could I just finish my sentence?

**Mr. Victor Fedeli:** Well, we've only got about two minutes left, so I want to ask you: Is the total cost more than \$40 million? Is the total cost to the taxpayer and ratepayer more than \$40 million for the cancellation of Oakville?

**Hon. Kathleen O. Wynne:** I believe, yes, that the cost is going to be more than \$40 million, and in fact that is exactly why I think it's important that we let the Auditor General do his work.

**Mr. Victor Fedeli:** Did you approve of the continued use of the numbers \$40 million and \$190 million? Your ministers have stood—you have repeated those numbers. Did you approve that number?

**Hon. Kathleen O. Wynne:** From the time that I have known that those were not complete numbers, Mr. Fedeli, I have not used those numbers, and that's—

**Mr. Victor Fedeli:** So when did you change from using \$40 million, then? I'm trying to figure that out.

**Hon. Kathleen O. Wynne:** What you need to know is that whenever I have stood and used a number, that has been the number that I have understood to be the real number. You will know that over the last eight weeks, nine weeks since I've been in this office, I have been very clear that we're not talking about specific numbers, because obviously—

**Mr. Victor Fedeli:** Well, you've used \$190 million; you've used \$40 million. When did you change from using \$40 million?

**Hon. Kathleen O. Wynne:** But, Mr. Fedeli, I haven't used those as the final numbers. I've said that those were the numbers that we were told. Those were the numbers that we understood to be the numbers.

**Mr. Victor Fedeli:** Well, you never quantified it or qualified it like that. Your minister stood and said that the only accurate cost to taxpayers for this relocation is \$40 million. That has been repeated by minister after minister after minister.

**Hon. Kathleen O. Wynne:** I don't know when that quote is taken from.

**Mr. Victor Fedeli:** There's one other number I want to ask you about, then. You used "36,000." You stood in the Legislature on September 25 and said, "As we know, 36,000 records were released today," and you qualified it by saying "responsive to the original motion of the estimates committee." So you put a little asterisk there because you knew, at that time, that 36,000 were not all the documents, because we have sworn testimony that the Ministry of Energy instructed OPA to pull documents out. Did you know the 36,000 were not all? And if so,

why did you qualify it with wobble language such as "were responsive to the original motion of the estimates committee"?

**Hon. Kathleen O. Wynne:** That language was to say how the documents had been asked for—

**Mr. Victor Fedeli:** Were they talking points? And if so, could you please table all the talking points? Because both you and about nine other cabinet ministers used the same language.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, the floor is yours, and I would invite—

**Mr. Victor Fedeli:** I will be asking—

**The Chair (Mr. Shafiq Qaadri):** I appreciate the day, but I'd just invite all committee members to allow the witness to respond as she sees fit.

Mr. Tabuns, the time is yours now.

**Mr. Peter Tabuns:** Premier, thank you for coming here today.

**Hon. Kathleen O. Wynne:** It's a pleasure, Mr. Tabuns.

**Mr. Peter Tabuns:** Premier, I've just been listening to your exchange with Mr. Fedeli, and you've been saying it's unclear what the costs are, but I have to say—and I've put this sheet in front of you, the Hansard record. It sure hasn't sounded—

**Hon. Kathleen O. Wynne:** This is the one that you—okay.

**Mr. Peter Tabuns:** It sure hasn't sounded to us like it was unclear. Here's Dalton McGuinty, October 15: "On the matter of the cost, Speaker, it's \$40 million.... Ours is \$40 million, Speaker; we've nailed that down."

You yourself on September 25, 2012: "The total cost ... is \$40 million."

Bob Chiarelli, March 20: "The OPA stated that the sunk costs for relocating the plant were \$40 million." He's qualified it there.

But then also, the same day, March 20: "On that particular cost assessment, the province did, in fact, pay for very expensive equipment on behalf of the vendor, on behalf of the developer.... and it ends up with a net cost of \$40 million, the number that the OPA has fully determined"—March 20, 2013.

**Hon. Kathleen O. Wynne:** That's the information that we were given, Mr. Tabuns. We were told that the number was \$40 million. The reality is that that's not the final number. There have been a series of numbers that have come out since those statements. But in every instance—I mean, I can speak for myself: I stood up and spoke to the number that I had been given.

**Mr. Peter Tabuns:** Premier, who gave you that number?

**Hon. Kathleen O. Wynne:** Those were numbers that came through the Ministry of Energy from the OPA. Those were numbers that the OPA had provided to the Ministry of Energy.

**Mr. Peter Tabuns:** Today, Colin Andersen, under oath, said that in the MOU, it was apparent there were a



lot more costs than the sunk costs, a lot more than the \$40 million, and everybody knew.

**Hon. Kathleen O. Wynne:** Yes, and in my opening statement, I said that when I was briefed—this was as of March 19; these numbers came out on March 19 and March 20—my understanding changed because there was a range of numbers. That's the \$136 million for the Oakville plant. There have been various numbers that have come forward, and that's why I think it's important that the Auditor General do his work.

**Mr. Peter Tabuns:** We think it's important that the Auditor General does his work as well, but it has been clear to just about everyone in Ontario since the day the \$40-million figure was first used that it didn't express what was going on, that in fact your government wasn't giving us the whole story. I have to say, based on what Mr. Andersen said today and what you're saying now, that's correct. We didn't get the whole story. We're short several hundred million dollars' worth of the whole story.

**Hon. Kathleen O. Wynne:** But we didn't get the full story either. That's the frustration from my perspective. You're right: You didn't get the full story, the Conservatives didn't get the full story, we didn't get the full story and the people of Ontario didn't get the full story, so that's a frustration.

Now, to be fair, I think Mr. Andersen and others have spoken to the complexity of calculating what the number is and what you're going to take into account or not. Mr. Fedeli has one way of calculating the number; the OPA is looking at the number in a different way. I'm not excusing that; I'm just saying that there is complexity in this that makes it clear that I want an accountant to look at this, and that's why I want the Auditor General to make his report.

**Mr. Peter Tabuns:** We want the Auditor General as well, but it's also clear that for those who looked at it at all objectively, \$40 million was never a credible number. Your minister today in question period said, "The MOU is up there. Anyone could see what was going on"—and actually, in that part, I'd say he's right.

**Hon. Kathleen O. Wynne:** The language around the \$40 million and the sunk costs—that's the number we were using. We were using the \$40 million and the sunk costs. As we understood it, that was the cost that was going to have to be picked up by public dollars. That was the number that we were using, and there were other costs, and those were unclear, so I acknowledge that.

**Mr. Peter Tabuns:** The documents obtained by us show that you were briefed by Chris Morley about the Vapour minute. Can you tell us what the substance of that briefing was?

**Hon. Kathleen O. Wynne:** That was a briefing before a cabinet walk-around, as I recall. When I was asked as a cabinet minister to sign a minute that was being walked around—and that happened to me fairly frequently, Mr. Tabuns, because I was a Toronto member, and if it were a Friday or it was a day when the House wasn't sitting, I would often be in my constituency office or I would be available. I would always ask for an understanding of

what it was I was signing, especially if it wasn't something on a file that I was familiar with. The briefing would have been very high level and, again, there would not have been specific numbers attached to it.

**Mr. Peter Tabuns:** Did he give you any sense of cost?

**Hon. Kathleen O. Wynne:** No, no.

**Mr. Peter Tabuns:** So you signed off on something that could have been worth a billion dollars.

**Hon. Kathleen O. Wynne:** No, I signed off on the implementation of a decision that was made by our government, and I was part of a cabinet that determined that we needed to reverse this decision, that there would be a negotiation associated with that and that there would be a cost associated with that. But I did not have access to those numbers.

You know that negotiations are confidential. I'm not saying that there weren't financial parameters; I'm just saying I didn't have access to those financial parameters.

**Mr. Peter Tabuns:** You've indicated before you didn't like the fact that Premier McGuinty prorogued to avoid questions about the gas plants.

**Hon. Kathleen O. Wynne:** I said I was uncomfortable with the prorogation, that I felt that we were all uncomfortable with prorogation and that the antidote was to get back to the Legislature as quickly as possible.

1530

**Mr. Peter Tabuns:** Since we've returned, we have had to wait a while now to get some numbers, and we still haven't seen anything from the treasury board which would have informed the government's approach to this whole matter. Have you thought of releasing those treasury board estimates of what the costs would be?

**Hon. Kathleen O. Wynne:** I have been crystal clear since I came into this office that whatever the committee felt it wanted to ask for, whatever the questions were, whatever documentation the committee saw fit to ask for, we would do everything in our power to provide that documentation. You know, quite frankly, that's why we're having this wide-ranging conversation here today, because I believed that the process needed to be opened up, that the mandate of the committee needed to be broadened, so that a broad range of questions could be asked. I was determined when I came into this office that we would deal—at that point, it was with the documents. It was about the documentation, making sure that people got the documentation that they were looking for.

And I understand that in the first instance some of the requests for documents were made with a narrow search, with narrow language, and that needed to be broadened. And as I have said before in the Legislature, it's not as though there are stacks of boxes sitting somewhere that say "Oakville and Mississauga gas plants." The reality is that these are electronic searches. You have to ask the question to get the right answer, and so, at least in part, that's why more documents have come forward.

But is it frustrating and do I think that it should have worked better? Absolutely. You know, I do not think that the process has been acceptable, right from the initial



decision to site these gas plants and not having taken into account, as I said in my opening statement, the community process. So it needs to be better, and one of the things I'm hoping will come out of this is that there will be some advice on what the process should look like going forward.

**Mr. Peter Tabuns:** Premier, were you briefed by the outgoing Premier's office on the cost of the two gas plants?

**Hon. Kathleen O. Wynne:** No.

**Mr. Peter Tabuns:** Were you briefed by the OPA on the cost of the two gas plants?

**Hon. Kathleen O. Wynne:** No.

**Mr. Peter Tabuns:** You didn't request briefing from either of them?

**Hon. Kathleen O. Wynne:** I have spoken—I have obviously had conversations with my Minister of Energy, and I know that he is in close contact with the OPA. He has provided that information. So, when I made my opening statement, I was briefed by folks from the Ministry of Energy.

**Mr. Peter Tabuns:** If you've had those briefings, then you've known that the cost was more than \$40 million since you were installed?

**Hon. Kathleen O. Wynne:** Well, yes. I said that I had a briefing that indicated that in the case of Mississauga the cost was \$271.4 million and that in the case of Oakville it was between \$33 million and \$136 million. And what that did for me, Mr. Tabuns, was it confirmed that we needed to have the Auditor General look at this situation. I had already asked the Auditor General to look at Oakville when I had that briefing, but it confirmed for me that it was not clear, it was not clear what the number was and that we needed to get to the bottom of that, and so that's why I asked the Auditor General.

**Mr. Peter Tabuns:** If I can just go back, you were briefed that Mississauga cost \$271 million?

**Hon. Kathleen O. Wynne:** That it was \$271.4 million. It's on that sheet that I gave.

**Mr. Peter Tabuns:** Right, and this was before the Auditor General gave his report?

**Hon. Kathleen O. Wynne:** Yes.

**Mr. Peter Tabuns:** Did you try to make it public at the time that it was \$271 million?

**Hon. Kathleen O. Wynne:** No, and I—you know, in the same way that I didn't announce to the public the number on the Oakville plant when I was briefed, because I believe, and I believed, that the Auditor General needed to do his work, because I think that there has been enough murkiness around this. I'm not an accountant, I'm not an engineer and I've never been a Minister of Energy, and it was very important to me that the Auditor General look at all of the numbers and that he weigh in and give us his best assessment.

**Mr. Peter Tabuns:** Up until last week, you were saying that Ontario needed to wait for the Auditor General's report before you were prepared to discuss costs at Oakville, but then last week, your minister called the Ontario Power Authority to come forward. Why didn't you do this earlier?

**Hon. Kathleen O. Wynne:** Well, again, I believe that this committee has—you know, it's got the authority now to ask the questions that need to be asked. I think that there have been a lot of questions about the cost. The OPA had been before the committee once. The Minister of Energy knew that there had been changes in the numbers. You'll have to ask the Minister of Energy why he made that particular determination, but from my perspective it certainly confirms that we need the Auditor General's report.

**Mr. Peter Tabuns:** When your government uses a distinction between taxpayer and ratepayer, it certainly matters to the annual reports of the Minister of Finance and to the head of the OPA, but in fact that's not the way most people say it. They see it as the expense of Ontario. Why has your government in the past said, "Well, this \$180 million, that's for the taxpayers," and kept out of the public light the rest of the cost, \$80 million to \$90 million?

**Hon. Kathleen O. Wynne:** I can't speak to the specifics of why that particular language was used in a particular instance, but the reality is, I agree with you that the money that will, over time—because these are costs that will be incurred over time. It's unacceptable, you know? When I say that I'm frustrated and I regret the situation—we shouldn't be in this situation. We should have had a better process in the first place so that we would not collectively have had to incur these costs. I've been very clear about that.

So, for me, the fine distinction between exactly who it is, which group of people are paying that off and where that money is coming from—it's all public dollars; you're absolutely right. It's one of the prime reasons that I believe that we need a better process going forward. We need a better process in terms of siting energy infrastructure, and we need to have a better process when and if there ever is a situation where there has to be a reversal of a decision. We need a better and clearer process on that as well.

**Mr. Peter Tabuns:** Speaking of processes, in northern York region the government went forward with a power plant that, frankly, exceeded local need and faced substantial opposition, just as substantial as Mississauga or Oakville. Yet, York Energy Centre went ahead in a Conservative-held riding and these other two power plants didn't go ahead. Seats were saved and a lot of money was spent. What are you going to do to ensure we don't see that?

**Hon. Kathleen O. Wynne:** Well, here's the reality: There have been 19 plants sited since 2003; 17 of them went more or less in a smooth way. The two that we are talking about today did not. It's those situations that raise the issue of how to put a better process in place. I can't speak to the York situation. I don't have the details of that. I can certainly get you more information on that if you'd like. But what I know is that we need better process, both on the siting of plants and making sure that there is community input and the process is transparent from the beginning, as well as if there ever has to be a



reversal of a decision, because I don't think sitting around this table can guarantee that there will never have to be a reversal of a decision. And if there is to be a reversal of a decision, how do we do that in a more transparent way and how do we make sure that many of these questions are addressed up front?

**Mr. Peter Tabuns:** But is it not clear to you, having looked at these two examples, that, as we privatize power generation, we enter onto very risky legal and financial grounds? One of the reasons we argued against the Mississauga plant and against the Oakville plant was that privatized plants carry these huge risks. If you read through the minutes, the emails, you'll see your officials, predecessors, obsessed with the idea that they were going to have to pay off profits for decades to come, whereas if these were publicly owned plants, you would be able to cancel them. There would be a hit on the profit to the construction company, but the risks are far greater as you privatize. If you're going to continue to privatize, we're going to continue to face these risks.

**Hon. Kathleen O. Wynne:** Well, you know, I'm not prepared to make the cause-and-effect link there. I hear what you're saying. I think that, as we have this discussion, that, obviously, is one of the points of view that has to be considered. But I believe that, given that there are 17 of these projects that went ahead and two that didn't—we certainly have a process that did not work. We need to look at all the aspects of that process and find a way to make sure that this never happens again.

1540

**Mr. Peter Tabuns:** Well, I'd suggest to you that it's a bigger problem than just the process, that it's the direction in terms of policy, privatization of the power system and a focus on gas power rather than investing in conservation and efficiency, which would have far less resistance and be far less expensive. You've taken a very high-risk course.

**Hon. Kathleen O. Wynne:** Again, we can have that policy discussion on the overall power mix. I certainly agree with you that going forward we need more conservation. That was one of the tenets of my leadership policy and I want to work towards that. But we are still going to have to have a mix of generating capacity.

**Mr. Peter Tabuns:** And are you taking back the lesson that privatized power is far more risky legally and financially?

**Hon. Kathleen O. Wynne:** I'm taking back the lesson that whatever happened here in these two processes, it didn't work. We did not have the transparency. We did not have the consideration of community input that was necessary in the first place. We haven't been able to clearly establish costs in a way that I think is appropriate, and so we need to learn from that and make sure that doesn't happen again.

Whether there's a philosophical underpinning that needs to be looked at, I think that's another discussion, but it certainly is a point of view that can be part of the going forward.

**Mr. Peter Tabuns:** In terms of processes, the Mississauga plant promise of cancellation was made—what?—within a week of a vote being taken. I gather you weren't consulted about it. The Minister of Energy wasn't consulted about it. I'd say that's more than just a bad process; that is a partisan political decision made to save seats.

**Hon. Kathleen O. Wynne:** Well, you know, you can characterize it that way. It's a decision that all the parties in the Legislature believed was the right one because we all believed that the plant shouldn't have been there and we had to undo a decision that had been taken prior.

**Mr. Peter Tabuns:** And which party was it that decided to put plants in those two locations?

**Hon. Kathleen O. Wynne:** I've heard you heckle that many times in the House, Mr. Tabuns. I understand that. But the reality is, we all believed that the placement of the plant needed to change, that it wasn't—that we shouldn't go forward with it. We all agreed to that, and we implemented that decision.

**Mr. Peter Tabuns:** But which party proposed it the first place?

**Hon. Kathleen O. Wynne:** Our party, our party, yes.

**Mr. Peter Tabuns:** So, in fact—

**Hon. Kathleen O. Wynne:** Our government. It was a decision—

**Mr. Peter Tabuns:** —you created a risk and we paid for it.

**Hon. Kathleen O. Wynne:** As I said, Mr. Tabuns, there was advice that was given—

**The Chair (Mr. Shafiq Qadri):** One minute.

**Hon. Kathleen O. Wynne:** There was advice that was given. We followed that advice. We made that decision, and the process didn't work. The reality is that we made a determination, as did the other parties, that it was the wrong decision and that it needed to be overturned. We implemented that decision.

**Mr. Peter Tabuns:** But it didn't work in northern York region either, and they got stuck. I can't say it worked in my riding either, and we got stuck. I would say the difference between the cancellations and the plants that went ahead was the complexion of the ridings themselves, the political makeup.

**Hon. Kathleen O. Wynne:** I hope that we can take the lessons that are necessary from this situation—from both these situations—and we can ensure that it doesn't happen again, and I hope this committee will help us with that.

**Mr. Peter Tabuns:** Go ahead.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. The floor now goes to Ms. Cansfield.

**Mrs. Donna H. Cansfield:** Thank you, Premier, for coming here today and joining us. I wanted to start by asking you: When you were first invited to testify before this committee, was this the first invitation you received?

**Hon. Kathleen O. Wynne:** I think I offered to come to the committee. I anticipated that that could be a request and I made it clear that I would be willing—I think I might have even said that during the leadership



race, that I would answer any questions. I always knew that it would be a question that would be asked of me, and I had no problem saying that I would come and have this conversation.

**Mrs. Donna H. Cansfield:** Thank you. On a number of occasions, you've publicly committed to appearing before the committee on a voluntary basis. Why did you think that was so particularly important?

**Hon. Kathleen O. Wynne:** Well, because I knew that once I came into this office and we were entering into this discussion, there would be a desire to hear from anyone who might have been in a decision-making role, that I had been part of cabinet, that cabinet had made this decision and that it was our government that had implemented this decision, and I thought it was very important for me to be open and to let everyone know what I did know and what I didn't know. More than that, I really believe that it's important that the people of Ontario understand that I'm working as hard as I can, as the Premier, to provide the information that has been asked for.

This is not a good situation. It's not a situation that I would have designed. It's not a process that I would have designed. We need to find a way to make it better. The only way we're going to do that is to make sure that all the information is on the table, and then learn the lessons from that and design a process going forward.

**Mrs. Donna H. Cansfield:** Actually, that leads into the next question that I'd like to ask you. It's about the scope of the committee. On March 5, the motion was put forward by the government that significantly expanded the scope of this committee to deal not just with the matter of contempt, but also broader issues related to the siting and relocation of the gas plants. Why did you ask the House leader to take this step?

**Hon. Kathleen O. Wynne:** One of my concerns was that the scope of the committee was narrow. I believe it was narrowed just to the provision of documents around the issues surrounding Chris Bentley, and I really felt that that was not adequate; that there needed to be a broader discussion of the planning, tendering, commissioning, cancellation, relocation—all of that needed to be part of the discussion. That was why I wanted the mandate broadened.

We had talked, at one point, about a select committee that would have the authority to ask all of those questions and determine what its mandate would be. That notion was rejected by the opposition. It seemed to me that it was important to have some way of getting a broader discussion, because my sense was that there would be other questions that needed to be asked.

**Mrs. Donna H. Cansfield:** Similarly, the Liberal members of this committee put forward a motion requesting documents government-wide and for an expanded time frame, but, unfortunately, the opposition voted it down. Why did you ask us, the Liberal members, to take that step?

**Hon. Kathleen O. Wynne:** Again, I wanted this all to be dealt with at once. I wanted to make sure that if there

were documents in other offices, in other ministries, that we would get at that as quickly as possible, because it just seemed to me that to have one shot at this and to be able to get as much information as possible and have as complete a picture as possible would be really important.

I was uncomfortable with the confusion around documents coming in different tranches, so I wanted to make sure that we could have a body that would be able to ask for as broad a scope as possible in terms of documents and information.

**Mrs. Donna H. Cansfield:** You have discussed a lot about the openness and transparency. I just wanted to update you that numerous document production motions have been moved with all-party support and with thousands of documents that have been provided to us. Even Mr. Fedeli agrees. The other day he said we keep wonderfully receiving these documents.

I would like to ask you about one, and it's the letter you wrote to the Auditor General on February 7—which is being distributed—as Premier-designate. I have copies. What I'd like to ask is, can you explain why you took the additional step of asking the Auditor General to report on the Oakville relocation?

**Hon. Kathleen O. Wynne:** At that point, the Auditor General was looking at the Mississauga situation. It seemed to me that since there were going to be many questions about both of these relocations, it would be a good idea to have the Auditor General look at the Oakville relocation as well. Again, I wanted to make sure that if there were lingering questions, if there was lingering confusion, if there were understandings that were not shared about costs or about any of the process surrounding either of these relocations, that we get to the bottom of that, and, particularly, that we have an expert in financial matters look at the costs, because, obviously, at the end of the day, the cost to the people of Ontario is what's most important.

**Mrs. Donna H. Cansfield:** Earlier, you said something about supporting the decision to relocate the two gas plants. Why did you support that?

**Hon. Kathleen O. Wynne:** Because I believe that the decision was based on not just community input but—I think you've had both Chris Bentley and Minister Duguid here, and Minister Duguid talked about the changing demand that was in place. There were a number of factors that went into that decision, and I believe it was the right decision.

But primarily from my perspective, it was that all of the factors haven't been considered. When I said—Mr. Fedeli asked me about it being a political decision. I think that we got advice from the bureaucracy, we got advice from experts, but that advice did not take into account some of the community factors.

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**Mrs. Donna H. Cansfield:** Fair enough. If it wasn't for the politicians, would you agree that these two power plants would have been built, even though all three parties opposed them and the communities didn't want them?



**Hon. Kathleen O. Wynne:** Yes, it was the political intervention that allowed the decision to be overturned, and there was a cost associated with that. We knew there would be a cost associated with it; we didn't know what that cost would be. But we did know that it was the right decision for those communities.

**Mrs. Donna H. Cansfield:** There has been some discussion about your role as the vice-chair of the Liberal campaign, and you've explained that very well. I want to ask a question about whether or not you were responsible for approving specific campaign announcements and commitments.

**Hon. Kathleen O. Wynne:** No, I wasn't.

**Mrs. Donna H. Cansfield:** Thank you. In that case, it doesn't seem unusual that, as campaign vice-chair, you wouldn't have been consulted on something like the decision to cancel the Mississauga plant. Would that be correct?

**Hon. Kathleen O. Wynne:** No, it was not unusual, and I wouldn't necessarily have expected to have been consulted on a specific announcement like that.

**Mrs. Donna H. Cansfield:** There was a series of questions I think Mr. Fedeli asked, and it was about the documents—I think it was document 1, and—

**Hon. Kathleen O. Wynne:** Actually, can I just go back to your previous question?

**Mrs. Donna H. Cansfield:** Sure.

**Hon. Kathleen O. Wynne:** Because I was the Minister of Transportation at the time, if there had been an announcement about a Ministry of Transportation issue, whether I'd been the vice-chair or not, I would have expected to be consulted on that. I wasn't the Minister of Energy, and so I wouldn't have expected to have been consulted on that.

**Mrs. Donna H. Cansfield:** Well, that makes sense.

**Hon. Kathleen O. Wynne:** Yes.

**Mrs. Donna H. Cansfield:** I wanted to go back, because Mr. Fedeli was asking about document 1 and the details of the negotiations. You spoke about your limited involvement in these issues prior to becoming Premier, and you mentioned you were one of four cabinet members that signed off on cabinet minutes. How are those four members chosen?

**Hon. Kathleen O. Wynne:** Well, as I said, often I was one of the ministers who were briefed and who signed off on those walk-arounds, as we call them, because I was available. Because I was in my constituency office—Don Valley West is not far from downtown; my office is on Eglinton Avenue—I was often available at a time when the House wasn't sitting, which is the reason that there would be a need to find ministers to sign off on a document.

**Mrs. Donna H. Cansfield:** Thank you. In terms of the cabinet meetings immediately following the government's decision not to move forward with the Mississauga plant, former Deputy Minister of Energy David Lindsay testified that while cabinet was provided with a status update on the negotiations, they would not have been made aware of any specific details or numbers. I'm

going to quote him, for his words: Cabinet "definitely would not be involved in these discussions." Would that be your recollection of what information would have been provided at the time?

**Hon. Kathleen O. Wynne:** Indeed, and when I say that cabinet would not have had those detailed discussions about cost or the financial parameters or the specific negotiations at the table, that's the case for other negotiations as well. The reality is that negotiations have to be, by definition, confidential, so there would not have been a specific discussion of specific items that were being negotiated, at that table or other tables where negotiations were under way.

**Mrs. Donna H. Cansfield:** Thank you. Almost every witness who has been here has testified at this committee and has confirmed that all three parties committed to cancelling both power plants. Oakville Mayor Burton told the committee that he "won promises from all parties to stop the proposed power plant," and Mayor McCallion from Mississauga also said, "I think all parties would have cancelled it...."

We have transcripts, campaign literature and robocall scripts that highlight these commitments made by the opposition parties. As a matter of fact, there were a few in my own riding. Doesn't it seem a bit odd that the PCs and the NDP openly criticize our government for these decisions while actually refusing to make any commitment on their own, when in fact they did make that commitment during the campaign?

**Hon. Kathleen O. Wynne:** Well, we all understand now how this all works. I understand that there are questions to be raised, and to be fair, it's the opposition's job to raise questions and to make sure that government is held to account. In this instance, as you say, there was pretty unanimous agreement—as far as I know, unanimous agreement—that these gas plants needed to be relocated, that the decisions needed to be overturned.

For me, what is of great concern is that we do better next time, that this not happen again. My hope would be that, out of this process that is part of the democratic parliamentary process, we come up with a better and more transparent and clearer path if such a situation arises again.

**Mrs. Donna H. Cansfield:** I'd like to do a chronological bit of an order around costs, because last July, the government announced that the cost to relocate Mississauga was \$190 million. In September, the government announced sunk costs of \$40 million for Oakville as well as some future costs and savings which hadn't been estimated at the time. So what led you to believe that these were the costs?

**Hon. Kathleen O. Wynne:** I was told those were the costs. I was told by the people on whom I rely for information—those were the ministers, the ministers' staff and the experts. We get that information, and those are the numbers that I was given. We have subsequently learned that those numbers have changed, and so that's what this process is about.

**Mrs. Donna H. Cansfield:** This morning, when Colin Andersen was in, he testified before the committee.



When he was asked about these original cost estimates, he confirmed, and I'll quote again: The government "relied on OPA numbers, and that's true.... we did provide them with the numbers. That is what you would expect."

Would you agree that any numbers the government would have used would have been provided for and approved by the OPA?

**Hon. Kathleen O. Wynne:** Absolutely. That's where we got the numbers. Government got the numbers from the OPA. I would not have gotten those numbers from the OPA; I would have gotten them from the Ministry of Energy and from the Minister of Energy, through the OPA. That was where we got those numbers. That's where the experts were.

**Mrs. Donna H. Cansfield:** When you got the \$33 million from the OPA in March 2013 on the Oakville plant, you were briefed on those numbers. Did you accept those numbers at the time?

**Hon. Kathleen O. Wynne:** It was a range. It was a range of between \$33 million and \$136 million. That's a pretty big range, so that confirmed to me that we needed a financial expert to look at the way these numbers were being calculated and to determine what the best assessment of the situation was, because I wasn't satisfied that a range of \$33 million to \$136 million was concrete enough to be able to talk about—

**Mrs. Donna H. Cansfield:** That's reasonable. After the AG's report came out on Mississauga, the opposition asked for an update on the OPA's numbers for Oakville. In the interest of openness and transparency, last week Minister Chiarelli wrote to the committee that the Liberal members would put forward a motion to invite the OPA to testify the following day to provide an update of the estimates, and there's a letter. Interestingly enough, that particular motion was actually voted down.

Nevertheless, Mr. Andersen testified before the committee this morning, and he provided the committee with two new numbers. Were you aware of the new numbers that Colin brought forward?

**Hon. Kathleen O. Wynne:** No, I wasn't, not until this morning.

**Mrs. Donna H. Cansfield:** Given that there have been four different numbers in one month, would you believe that it's very important that we all wait for the auditor's report?

**Hon. Kathleen O. Wynne:** Yes. I think that you're making the argument for me that we need the Auditor General's report. I don't understand why there wouldn't have been a desire to have the OPA come forward earlier when Minister Chiarelli proposed it, but the fact is, he was here today, and that's a good thing. I did not know about those numbers, but it certainly confirms for me why the Auditor General's report is important.

**Mrs. Donna H. Cansfield:** Thank you, Chair. I think Mr. Del Duca has a question he might like to ask.

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca, the floor is yours.

**Mr. Steven Del Duca:** Thank you, Mr. Chair; thank you, Ms. Cansfield; and thank you, Premier, for being here today.

In the first round of questioning from Mr. Tabuns and the NDP, there was an issue that came up regarding the York region power plant. I just wanted to read into the record—earlier today, when Colin Andersen from the OPA was here, he spoke at length to this particular issue. He testified this morning that the situation in northern York region was quite different from Oakville, and specifically he said that the circumstances were very different; that northern York region was either on the brink or that they had passed the point of meeting reliability standards. In his words, they were very much more in need of a very immediate solution than the circumstances that they found themselves in with respect to Oakville. I thought it was important to clarify that point.

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**Hon. Kathleen O. Wynne:** In fact, it was the reverse in the other two gas plants, where the capacity wasn't necessarily needed, yes.

**Mr. Steven Del Duca:** I'd like to move on with the remaining time in this round to talk a little bit about the former Minister of Energy, our former colleague, Chris Bentley. I'd like to ask you about the situation that arose in May 2012 at the estimates committee. As you know, the committee passed a motion by Mr. Leone asking for all correspondence within a specified time frame from the Ministry of Energy and the OPA related to the Mississauga and Oakville gas plants. At the time the motion was passed, complex and sensitive negotiations were ongoing with both companies.

Last week, when Mr. Bentley was here before this committee, he told us, and I'm going to quote him: "The advice I received, and my belief, was that producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if."

What do you think about Minister Bentley's decision to wait to release these sensitive documents until the deals were finalized? Do you believe he was, as he said, looking out for the public interest?

**Hon. Kathleen O. Wynne:** Just this past weekend I watched Minister Bentley's testimony, and I absolutely believe that he was acting in the best interests of the people of Ontario. I've known Chris Bentley for 10 years, and in his capacity as an elected official I've never seen him do otherwise. I mean, he always took into account what was in the best interests of the people of Ontario, and did it with integrity. So I absolutely believe him and I think that he made it clear, through that gambit and otherwise, that he was very concerned with releasing information that could do damage and could actually end up costing the people of Ontario more.

**Mr. Steven Del Duca:** Thank you for that. At this point, is there anything else you want to expand on from



the questions that you've heard from our caucus so far in this round?

**Hon. Kathleen O. Wynne:** No, I think just to be clear that I am glad that we're able to have the opportunity to hear from all of the people who may or may not have been directly involved. I think it's extremely important. You know, all of you who are part of our government know, that we want to find a better process going forward, and that's really what this conversation has to be about.

**Mr. Steven Del Duca:** Great. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. The floor goes to the PC side. Ms. MacLeod.

**Ms. Lisa MacLeod:** Thanks very much, Chair. Welcome to committee, Premier. It's nice to see you here and I want to thank you for coming. I know after the hard-hitting questions in the last round, you'll probably enjoy having a discussion and a conversation about the process with me.

**Hon. Kathleen O. Wynne:** Looking forward to it, Ms. MacLeod.

**Ms. Lisa MacLeod:** In the last couple of rounds, my colleague Mr. Fedeli and my other colleague from the third party, Mr. Tabuns, asked you a number of times about the \$40 million cost and the additional dollars over that and when you were aware of it. You haven't given us an answer. So I'm going to attempt another time, asking when you and other cabinet ministers were first aware that the cost of this power plant and its cancellation would be above \$40 million.

**Hon. Kathleen O. Wynne:** Forty million dollars was the amount that we were told were the sunk costs, and that was the number that we were using. That was the number that the OPA gave us, and to the best of our knowledge—to the best of my knowledge—that was the cost.

**Ms. Lisa MacLeod:** But I guess the question is—I mean, it's been acknowledged by David Livingston, David Lindsay, by Mr. Andersen, Ms. Butler, Shelly Jamieson—they all point that from the outset everyone knew it was going to be more than \$40 million. So at some point, you and your cabinet had to have been aware that this was over \$40 million, yet at the same time, you told the public, including members of this assembly—in fact, you said it in the assembly—that it was still only \$40 million. I really think, on behalf of my colleagues in the opposition and the taxpayers of this province, we'd like to know when: When did you find out in a cabinet briefing or from ministry officials or from the OPA that that number was higher, and why didn't you inform the public then? That is a very serious cause of concern for all of us, and I think if you could shed some light on that, we'd very much appreciate it.

**Hon. Kathleen O. Wynne:** My understanding of the \$40 million was that that was the cost. There has been, to this day, right to today—I do not have confidence or clarity that we know exactly what the cost is.

**Ms. Lisa MacLeod:** But you acknowledged, Premier, earlier today that you knew it was over \$40 million and

you've chosen to lowball. I think in your own statement—and if I may read this because this is a cause of concern, and I'm sure that members of the public are asking this, too.

You said in your statement, "... the OPA's estimate for the cost to relocate Oakville was between \$33 million to \$136 million." Why were you using a lower number when you knew the cost could explode? Did you just feel it was easier not to tell the public what the truth was?

**Hon. Kathleen O. Wynne:** Well, actually, Ms. MacLeod, the range, \$33 million to \$136 million, actually there's a lower number there than \$40 million.

**Mr. John Yakabuski:** There's the high one, too.

**Hon. Kathleen O. Wynne:** And there's a high one, absolutely. There was no clarity on what the number was. It was very important to me that not only should the Auditor General look at the Mississauga situation but also at the Oakville plant—

**Ms. Lisa MacLeod:** But you didn't think at any point ever that this was going to be lower than \$40 million?

**Hon. Kathleen O. Wynne:** Well, I didn't know.

**Ms. Lisa MacLeod:** You knew it was going to escalate.

**Hon. Kathleen O. Wynne:** I didn't know. When I was briefed on this document and the range was \$33 million to \$136 million, I didn't know.

**Ms. Lisa MacLeod:** What was the date of that meeting?

**Hon. Kathleen O. Wynne:** The date of this document is March 20.

**Ms. Lisa MacLeod:** And, on March 20, was that the first time that you say that you felt that this was going to be—

**Hon. Kathleen O. Wynne:** That's the day I got these numbers.

**Ms. Lisa MacLeod:** Okay. So Shelly Jamieson, David Livingston, David Lindsay, Ms. Butler—I believe her name's JoAnne—and Mr. Andersen who testified today said at the outset you would have known as a member of cabinet. It's a question that begs to be asked. Are you not forthcoming with the date and what number you knew this was going to cost because you're under oath?

**Hon. Kathleen O. Wynne:** I'm telling you that \$40 million was the number I had until I had a number—the \$33 million to \$136 million. The Minister of Energy has said that there was a memorandum of understanding that made it clear that there could be other costs associated, but we did not have a number that—I think the term was "crystallized," that Colin Andersen used. There wasn't another number that we could point to and say, "Well, it's either \$40 million or it's that number." We didn't have another number. I have since—and I've told you I was given this document—\$33 million to \$136 million was the range. There was another number today. The lack of clarity on what those costs were made it, to me, clear that we needed to have the Auditor General look at what the situation was.

**Ms. Lisa MacLeod:** Premier, I appreciate you don't want to answer this question, but it is important.



**Hon. Kathleen O. Wynne:** I am answering the question.

**Ms. Lisa MacLeod:** The OPA said you were party to the MOU that said it was going to be more than \$40 million. I don't think that there is a cabinet minister or a cabinet minister staffer in the country who doesn't think that you would not have read the terms to that MOU and you would have just blindly signed it. There's either an issue here with you telling the truth to us or there's a point of incompetence here.

At some point, Premier, we're going to have to get to the bottom of that because we know, for example, that your cabinet, your party, has relied on a number of \$40 million. We know that there's been numerous testimony here from very credible witnesses who said you were aware, your cabinet was aware, of other costs.

So I ask you one more time: Given you were party to an MOU that stated that the cost would be over \$40 million, given the testimonies of Jamieson, Livingston, Lindsay, Butler and, today, Andersen that you knew of the cost at the outset, why did you decide not to share or bother or continually and intentionally leave the wrong number out there?

**Hon. Kathleen O. Wynne:** I did not—

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod, just as you continue, I'd just respectfully invite you to please use more parliamentary language.

**Ms. Lisa MacLeod:** Which, what—I'll withdraw. I withdraw.

**The Chair (Mr. Shafiq Qaadri):** Please continue. Thank you.

**Hon. Kathleen O. Wynne:** I relied on the information that I was given by the OPA. Forty million dollars was the number that we were told. I have since been given documents that suggested that the cost could be between \$33 million and \$136 million. There has not been a firm cost associated with this plan. Today, we learned another number, and I believe that it is imperative that we wait for the Auditor General to weigh in on the costs of this project.

**Ms. Lisa MacLeod:** Just quickly—

**Hon. Kathleen O. Wynne:** Because there was no clarity, I think it is very fair to say—the memorandum of understanding was available. There was an indication that there could be other costs, and that was in the public realm, but \$40 million was the number that we were given, and as recently—

**Ms. Lisa MacLeod:** But, Premier, I have about two minutes left—

**Hon. Kathleen O. Wynne:** Could I just finish—

**Ms. Lisa MacLeod:** I have two minutes left, and I just want to ask one final question.

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**Hon. Kathleen O. Wynne:** Could I just finish, Mr. Chair?

**Ms. Lisa MacLeod:** First of all, we know that they said at the OPA that you had seen the MOU that there were more costs. Shelly Jamieson—I'll quote her—said

“buckets of costs.” You're not telling us what the true number was and when you knew it.

**Hon. Kathleen O. Wynne:** I didn't—

**Ms. Lisa MacLeod:** And that is a problem. The other thing is—and I really want to say this on behalf of taxpayers—why aren't you taking responsibility for this? Why aren't you apologizing to the people of this province? Why aren't you here today saying, “I'm sorry”? This is not Dalton McGuinty's mess; it is the Liberal Party of Ontario's mess, and it is your mess, too.

**Hon. Kathleen O. Wynne:** I have said I regret this situation. I have said it repeatedly. I regret this situation. And I have said that I take responsibility to make sure that this never happens again. I have taken responsibility since the day I came into this office.

There was no true number, as you're saying it, because the number has changed. We relied on the information that was given to us by the OPA. We relied on it consistently, and at every juncture I gave the information that I had been given by the OPA. As recently as March 20, the information I was given by the OPA was that the cost could be as low as \$33 million. That's the reality. That's the truth as I know it. That is exactly what I have said today, and I will continue to say that.

**Ms. Lisa MacLeod:** Just quickly, I just want one point and then I'll ask a quick question and I'll leave it to you. Again, I do appreciate you coming in here.

First of all, qualifying the truth “as you know it” every single time I don't think instills a lot of confidence in the public toward your government. Finally, my last question to you is this: Did you ever meet with Dalton McGuinty about these two plants, either as Premier or as a cabinet minister?

**Hon. Kathleen O. Wynne:** No.

**Ms. Lisa MacLeod:** Were you ever briefed by his staff, either as Premier or as a cabinet minister?

**Hon. Kathleen O. Wynne:** Only insofar as I was signing off on a cabinet walk-around, as I said earlier, and there were no numbers associated with that briefing.

**Ms. Lisa MacLeod:** Why did you not read the MOU?

**Hon. Kathleen O. Wynne:** I was relying on information that had been given to me and had been given to our government by the OPA, and continued to rely on it up until today, and the numbers have continued to change. So there was no absolute—

**Ms. Lisa MacLeod:** But that MOU stated very clearly it was over \$40 million.

**Hon. Kathleen O. Wynne:** There was no absolute number, and I have done everything in my power to open up this process so people could get the answers that they needed.

**Ms. Lisa MacLeod:** So you've always known it was—look, Premier, I just want to say thanks.

**Hon. Kathleen O. Wynne:** I just need to say, I have not known what the number was. I was told it was \$40 million. I'm as frustrated as anyone around this table—

**Ms. Lisa MacLeod:** But you knew it was more than \$40 million.

**Hon. Kathleen O. Wynne:** I did not know that; I did not know what the number was.



**Ms. Lisa MacLeod:** But you just said that today, in your testimony earlier with my colleagues.

**Hon. Kathleen O. Wynne:** I said—

**Ms. Lisa MacLeod:** You actually stated in March that you had a briefing from officials.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacLeod. The floor now passes to Mr. Tabuns.

**Mr. Peter Tabuns:** In fact, Mr. Chair—

**The Chair (Mr. Shafiq Qaadri):** Mr. Natyshak.

**Mr. Taras Natyshak:** Premier, thank you for your testimony thus far.

**Hon. Kathleen O. Wynne:** My pleasure.

**Mr. Taras Natyshak:** I'd like to talk about perception. The general public out there, obviously, has had a long time to digest what's happened here at Queen's Park in relation to the cancellation of the Oakville and Mississauga gas plants. I want to see if you agree with what I'm hearing, and what we're all hearing, in terms of how people perceive what's happened. They see that the Liberal government commissioned two gas plants in Oakville and Mississauga, in unpopular locations. They see that public opposition to these gas plants reached a fever pitch right around the election timing of the campaign. They see that a "politically motivated"—your words—announcement to cancel these plants was made—

**Hon. Kathleen O. Wynne:** I didn't say "politically motivated." I said it was a political decision.

**Mr. Taras Natyshak:** It was a political decision.

**Hon. Kathleen O. Wynne:** Made by politicians.

**Mr. Taras Natyshak:** We're talking perception.

**Hon. Kathleen O. Wynne:** Yes.

**Mr. Taras Natyshak:** So they hear that. Just in the nick of time, minutes before election day. They see that there were no thoughts through that decision as to the costs associated with the gas plant cancellation, no thoughts of the overall costs at that very moment. They also see that since that time opposition members have struggled to get concrete answers from the government related to costs and documents that are associated. Would you agree with that perception that I feel is palpable within the general public?

**Hon. Kathleen O. Wynne:** Well, I'm not going to contradict what you think the perception is, but I would add—

**Mr. Taras Natyshak:** Do you agree?

**Hon. Kathleen O. Wynne:** I agree that there are aspects of that that may be embedded in people's minds. I think that kind of characterization speaks to the frustration that certainly I feel, my government feels and certainly the opposition feels. But on top of that, I think that a troublesome piece of perception is that it has been very difficult for the politicians, government or otherwise, to get concrete answers.

**Mr. Taras Natyshak:** Hear, hear.

**Hon. Kathleen O. Wynne:** That is a real problem from my perspective—

**Mr. Taras Natyshak:** I can attest to that.

**Hon. Kathleen O. Wynne:** —and I've been in a situation trying to provide concrete answers and concrete

information, and it's very difficult given that the numbers keep changing. And I think we've had experts explain why the numbers keep changing, and it's not that I am second-guessing experts, but it's very frustrating not to be able to get more concrete answers—

**Mr. Taras Natyshak:** We feel that frustration, Premier.

**Hon. Kathleen O. Wynne:** Yes, absolutely.

**Mr. Taras Natyshak:** Thank you. Can you tell us what your role was as a campaign co-chair? What does that mean? What do they do?

**Hon. Kathleen O. Wynne:** Vice-chair, okay?

**Mr. Taras Natyshak:** Okay.

**Hon. Kathleen O. Wynne:** What I said earlier today was that my role in the campaign was to be out in the field, to be in ridings. I was doing fundraisers in some parts of the province in unheld ridings. I was working with candidates. I was doing some media in some of the smaller media markets to talk about our campaign.

**Mr. Taras Natyshak:** Would you also be privy to strategic policy development?

**Hon. Kathleen O. Wynne:** Not on a day-to-day basis. I was in the higher-level discussions around policy, but I was not involved, once the campaign started—because there were meetings leading up to the campaign that the campaign committee held, and I was part of those meetings, but those were quite large meetings. The day-to-day implementation as we were in the campaign—I was not part of those.

**Mr. Taras Natyshak:** Did you discuss, as campaign vice-chair, the situations in Oakville and Mississauga as they related to the gas plants?

**Hon. Kathleen O. Wynne:** No.

**Mr. Taras Natyshak:** No. Did you discuss specific polling numbers related to those five ridings that surround it?

**Hon. Kathleen O. Wynne:** No.

**Mr. Taras Natyshak:** You didn't.

**Hon. Kathleen O. Wynne:** I did not.

**Mr. Taras Natyshak:** Did you discuss whether those were winnable ridings as an assessment of the overall fortunes of the Liberal Party at that time?

**Hon. Kathleen O. Wynne:** Quite honestly, I was not part of those kinds of discussions. We had general discussions about general polling, the direction that the government was going in and the policies that we had in place, but the riding-by-riding strategy—I was not part of that discussion.

**Mr. Taras Natyshak:** Were you aware that up until the point your party's announcement was made, the gas plants were a source of consternation for your candidates? Were you aware that they were feeling the amount of pressure that we know obviously existed?

**Hon. Kathleen O. Wynne:** I knew generally that they were an issue, Mr. Natyshak, but I was not engaged in the day-to-day impact of those decisions on the candidates. I've since become aware, obviously.

**Mr. Taras Natyshak:** Okay. There came a point where the campaign promise—it became a promise, right?



**Hon. Kathleen O. Wynne:** On the part of all three parties, as I understand it.

**Mr. Taras Natyshak:** Well, we'll get to that. You were also monitoring all the other party leaders at that time as campaign vice-chair.

**Hon. Kathleen O. Wynne:** Right.

**Mr. Taras Natyshak:** You would have known what they were talking about on various issues.

**Hon. Kathleen O. Wynne:** Right.

**Mr. Taras Natyshak:** I'll read you a quote, Premier, and we'll see if you can recollect. It's from the Canadian Press, October 5, 2011. Andrea Horwath: "Last-minute promises like that"—in reference to the gas plant cancellation—"people have to decide whether they're credible or they're not. Now Mr. Hudak's making the same claim, we don't know what that's going to cost. I think what both these guys need to do is be really upfront with the public about what the cost of cancelling these deals is going to be." So you would—

**Hon. Kathleen O. Wynne:** Fair enough, but the reality is, that would have been impossible.

**Mr. Taras Natyshak:** Do you remember seeing that from Andrea?

**Hon. Kathleen O. Wynne:** I don't remember seeing that.

**Mr. Taras Natyshak:** You're aware that she addressed that these were unknown costs and—

**Hon. Kathleen O. Wynne:** I don't remember her specific language around this issue. I'll just be honest with you; I don't remember that. It's completely consistent with what your leader has said since then, but it would have been impossible, we know now—

**Mr. Taras Natyshak:** It's inconsistent with what your party has said. In terms of what our position was, we would not have cancelled the gas plants not knowing what the full costing would have been.

I need to ask you about the policy during the election. Those are promises, and people expect to see them fully nuanced and costed out. Was the Liberal Party platform fully costed during the election?

**Hon. Kathleen O. Wynne:** I'm just going to say that my understanding is that your candidates were clear that you would cancel the gas plant. I think you've had testimony at this committee that said that there was an understanding that the gas plants would have been cancelled. So that is my understanding.

What was your other question? Sorry.

**Mr. Taras Natyshak:** Was the campaign fully costed out, your platform?

**Hon. Kathleen O. Wynne:** Yes. But if you're going to ask me for the specifics, I'll have to get back to you.

**Mr. Taras Natyshak:** No, I'm not going to ask you for the specifics; I'm going to ask you at the point at which the promise, which then became a campaign platform issue, was made—did you refine the platform? Did you address the cost?

**Hon. Kathleen O. Wynne:** No. I think it's clear from what has transpired that yes, the platform was costed, but the reality is that it would have been impossible for us to

estimate exactly what the cost of the cancellation would be. We've been clear about that.

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**Mr. Taras Natyshak:** Premier, back to the perception that the people of this province see a party and its leadership, whether they be campaign co-chairs—

**Hon. Kathleen O. Wynne:** Vice-chair.

**Mr. Taras Natyshak:** I apologize—campaign vice-chairs or the then Premier and various ministers, recklessly make a promise without any knowledge of the ramifications and without any knowledge of the costs. My question to you is: Do you think that that's what leadership means, to go about a direction of the government, or whether it's through a campaign, without fully knowing the cost to the public?

**Hon. Kathleen O. Wynne:** Well, I think the reality is that in a situation like this, a major infrastructure project, if the decision is made that it's not going to go forward, there will be a cost attached to it. I understand your position that you were in a different position in terms of the initial decision, but the reality is that all the parties had said that they were going to cancel the gas plant. If that is the case, then there will be a cost associated with that, and it would have been impossible for anyone to know exactly what the cost of that would be.

**Mr. Taras Natyshak:** You just acknowledged that you monitored media during the campaign, and I read you a quote from October 5, 2011, that our leader indicated that she would not recklessly cancel any contract that didn't have costs associated to it. Would you say that that was a prudent direction at that time?

**Hon. Kathleen O. Wynne:** There has been testimony—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Kathleen O. Wynne:** —at this committee that all parties undertook that they would cancel the gas plants, so the reality is that there was going to be a cost associated with that, and no one could have known what that cost would be.

**Mr. Taras Natyshak:** I contest that. It's here in black and white that our leader, at that very moment, stated categorically that she would not cancel any plant without knowing—

**Hon. Kathleen O. Wynne:** But there has been testimony at this committee. I'm quite clear that there has been testimony—

**Mr. Taras Natyshak:** I mean, you're getting it from the leader. I guess my question is back to leadership. Is that the type of leadership that we can expect going forward? You talked about the fact that there will be other cancellations, whether they be in energy or otherwise. Can we expect a continuation of recklessly cancelling contracts without knowing the full costs?

**Hon. Kathleen O. Wynne:** I've said clearly that we need a better process going forward, and when I said there may be other situations like this, I was talking about over the next 50 years. There may be decisions that the government has to reverse, and we need a better process going forward.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Natyshak. The floor goes now to Ms. Cansfield for the final 10 minutes.

**Mrs. Donna H. Cansfield:** Thank you very much. I just wanted to have an opportunity to chat a little bit about a walk-about, since I've had some dealings with walk-about. It will just help, again, to put it into some time frame and into some perspective.

On July 29, 2011, you were part of a walk-about that authorized the Ministry of Energy to enter into an agreement with TransCanada under the Arbitration Act to engage in settlement discussions etc., report back to cabinet and authorize the Minister of Finance. That was in July. That's all this walk-about did. That's all. Nothing more—

**Hon. Kathleen O. Wynne:** It was to enter into a process.

**Mrs. Donna H. Cansfield:** And I can attest that you get nothing more than this.

**Hon. Kathleen O. Wynne:** Right.

**Mrs. Donna H. Cansfield:** And then it was reported into cabinet on August 10, and then it came back on October 3, 2012. That, in itself, speaks to the extraordinary complexity of negotiations, just simply by the time frame.

**Hon. Kathleen O. Wynne:** Exactly.

**Mrs. Donna H. Cansfield:** And I think it shows that none of this is going to happen in a snap and that it's very complex. That's part of the challenge that you faced in that constantly those numbers were changing. We've had four so far. You've come back and restated that that's why you went to the auditor. Would that be correct?

**Hon. Kathleen O. Wynne:** Absolutely, and nobody could have anticipated (a) how long it was going to take or (b) what the cost was going to be at the end of the settlement, because that negotiation was going to take time. There was going to be a back-and-forth, and obviously it took a long time. The complexity is the reason for that.

**Mrs. Donna H. Cansfield:** Thank you, Premier.

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca.

**Mr. Steven Del Duca:** Thank you, Mr. Chair. My voice is loud enough even without a mike on.

There were a number of things that you heard from the NDP caucus earlier, Premier, and I just wanted to shed a little bit of light on—I know that it sounded, from my perspective, like a tiny bit of revisionist history coming from you, from that side.

Just to read into the record, back in September 26, 2011, Peter Tabuns, MPP: "We wouldn't build it" in reference to the Mississauga plant. September 26 was during the election campaign itself. The local NDP candidate confirmed that the NDP would cancel the plant. The quotes go on; we've heard them in the Legislature. You are quite right to point out that they were of the same mind with respect to those issues.

Also, we heard earlier today from the—despite what the PC caucus is trying to allege, you told us that you were aware of the September 24 MOU with the \$40-

million sunk cost, or the additional costs, and additional savings, but that the OPA did not have those estimates at the time. You also said you received a briefing that, as of March 20, the OPA's estimates were in the range of anywhere from \$33 million to \$136 million, and then you said that the Minister of Energy invited the OPA to come to this committee to provide an update, which the OPA did this morning, as we all know. I think you've been very, very clear on what you've known throughout this entire process with respect to the cost associated with Oakville, so I want to thank you for being very clear with the committee.

I want to cycle back to where I was when I finished the first round of questioning, talking about our former colleague, Chris Bentley. As you know, part of this committee's job is to review the Speaker's finding of a *prima facie* case of privilege with respect to the production of documents by the Minister of Energy and the OPA.

As you said earlier, you worked with Mr. Bentley for many, many years. Can you please elaborate, share your views on him, not only as a member of cabinet but also as a person?

**Hon. Kathleen O. Wynne:** I know that in every instance, Chris Bentley would have done what he believed to be in the best interests of the people of Ontario. I also know that he's a man who was very clear on following the rules. He would have done everything in his power to make sure that we were, as a government, following the rules; by that, I mean following the letter of the law and following the procedures that—the framework within which we were operating. So at every instance, whether it was a request for documents or whether it was a question about cost, he would have delivered the absolute truth that he'd been given.

I have the utmost respect for him and I think that he was very clear when he came and spoke before the committee why he made the decisions that he made, and that he made those decisions in the best interests of the people of Ontario, because he was concerned about the timing of the release of information because it was a sensitive discussion, a sensitive negotiation, and he wanted to make sure that documents weren't released and thereby undermine the negotiations. So my respect for him is complete and I think that, as I say, he did what he did in the best interests of the people of Ontario.

**Mr. Steven Del Duca:** Thank you. When Mr. Bentley was here before the committee—and I think it might have been the last question or the second-last question that he was responding to—he had the following to say about the personal impact that this issue has had on him, and I'm going to quote him here; I think it's really important to do so: "I think it would be fair to say that this past year has been one of the most difficult I could ever imagine."

"The sacrifices that families make in public life are enormous, far beyond what most people would even begin to think, but the sacrifice and effect that my family has had over the past year has been incredible. I'm sorry that I put them through that by effectively doing what I always wanted to do, which was to serve the people."



When you hear that statement, when you hear those remarks from Mr. Bentley, what's your reaction?

**Hon. Kathleen O. Wynne:** It's a mix of sadness and what I would have expected from him. I know it was an extremely hard year; I know that he was trying to do his very best to live up to the expectations of his constituents, of the government, of the people of the province. It was a very difficult situation because of the lack of clarity in all of the information that was or was not available.

It's one of the reasons that I wanted to be so clear that we carry on and we get to the bottom of this and we make it absolutely clear that he acted in the best interests, that he acted with integrity, because I know he did and so that has been my contention; it will continue to be my contention.

**Mr. Steven Del Duca:** Thank you. So in terms of moving forward, I know that earlier today we talked a little bit about the expanded scope of the committee. At the end of the day, what type of advice and recommendations are you hoping to see from this committee?

**Hon. Kathleen O. Wynne:** Well, I really hope that this committee will be able to give us advice on how to avoid ever getting into a situation like this again, to make sure this doesn't happen again, to make sure that information can flow the way it needs to, that there is a better understanding of what costs might be or how the decision-making process should work going forward, because it hasn't been clear. It's still not clear, and I think we need some advice.

You have listened to hours of testimony, and I look to the committee to bring forward a report that will inform decision-making going forward.

**Mr. Steven Del Duca:** Is there anything else you'd like to tell the people of Ontario regarding this issue?

**Hon. Kathleen O. Wynne:** Just that I am committed to openness. That's why I'm here. That's why I came today. It's why I wanted the justice committee to have the purview that it has, that it could ask all the questions necessary.

I regret that we're in this situation. I regret that we didn't make a better decision to start out with and that the process was not better throughout. I believe it's a decision that any party—all parties—would have made. We implemented that decision, and I look forward to the report of the committee.

**Mr. Steven Del Duca:** Thank you very much. Thanks for being here today.

**Hon. Kathleen O. Wynne:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca and the government side. On behalf of the Standing Committee on Justice Policy, Premier, I'd like to thank you for your time, the gesture of your presence and your endurance. You are respectfully but officially dismissed.

**Hon. Kathleen O. Wynne:** Dismissed.

**The Chair (Mr. Shafiq Qaadri):** I presume folks would like to scrum with the press. We still have three or four items left, so I'm willing to take a five-to-10-minute-or-so recess.

**Mr. Victor Fedeli:** Chair, all I want to do before the Premier leaves is ask for copies of the talking points I referred to.

**The Chair (Mr. Shafiq Qaadri):** That can be done in the absence of the Premier. That's fine.

**Mr. Victor Fedeli:** You'll be receiving a letter with respect to the talking points—

**The Chair (Mr. Shafiq Qaadri):** We'll take a five-to-10-minute recess, but I do encourage all members to please return, because we do have three or four items left on the agenda. Thank you.

*The committee recessed from 1632 to 1643.*

**The Chair (Mr. Shafiq Qaadri):** Thanks, colleagues. We're back in session. There are three or four items that we still need to deal with. First, to let you know, the draft report will be distributed, hard copy, this Friday. We'll be having a meeting on Monday, May 6, after question period for the writing. We still needed to determine whether we'll do that in a kind of an open or closed session format.

The other thing as well: There are some documents of a confidential nature. They've been flagged. Two of the caucuses—caucuses or cauci?—have receipted these, the government and the PC side, from Infrastructure Ontario. There's another group from OPA. We need to decide, as I mentioned earlier this morning, whether we respect their call for full confidentiality, whether we go to a viewing room or a room with a view, or whether we meet in camera for this. Now, if you're prepared to answer these questions now, please do. If you need more time and discussion etc., that's fine also.

**Mr. Peter Tabuns:** I would prefer more time.

**The Chair (Mr. Shafiq Qaadri):** More time and discussion? Agreement?

**Mr. Victor Fedeli:** You mentioned that two parties have it. Do the NDP not have the document?

**The Chair (Mr. Shafiq Qaadri):** The NDP respectfully declined to sign the receipt that said—this was from Infrastructure Ontario.

**Mr. Victor Fedeli:** That's the about a one-inch-thick one?

**Mr. Bob Delaney:** Peter, do you want to table this until the next time?

**Mr. Peter Tabuns:** That would be fine by me.

**The Chair (Mr. Shafiq Qaadri):** Fine, so it's tabled. Any other issues?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Open or closed session, meaning open or closed to the public, the press etc.—as you know, on Monday May 6, after question period, report writing. Any discussion? Open or closed? Going once—

*Interjections.*

**The Clerk of the Committee (Ms. Tamara Poman-ski):** So Monday, May 6 is for report writing. Primarily, report writing usually happens in closed session, just by practice, with every committee. However, we can—it's up to the committee to decide if they want to do it in open session, keeping in mind that the draft report is just

going to be based on testimony that we've heard thus far. Again, it's up to the committee's decision on how they want to handle this for Monday.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Thanks, Chair. Were we aware that that was being done on Monday? Is there a time that we should have booked?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** There was a timeline that was distributed last week.

**Mr. Victor Fedeli:** Okay. And when is that time?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** It will be right after question period on Monday. The Monday, May 6 was set in the morning of the timeline that we distributed last week, but we're going to wait until after question period. The notice will be on Thursday.

**Mr. Victor Fedeli:** So what is the time: from 11:30 or 12 till—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Twelve till whenever we finish.

**Mr. Victor Fedeli:** Okay. I think it should be—

*Interjection.*

**Mr. Victor Fedeli:** We have our leader speaking to the budget that day. Is this something that's MPPs only or staff?

**The Chair (Mr. Shafiq Qaadri):** Well, first of all, I think that's what we're trying to decide. The report writing is whether we decide it to be open or closed to MPPs only.

*Interjection.*

**Mr. Victor Fedeli:** On an MPPs only, yes.

**The Chair (Mr. Shafiq Qaadri):** Staff, no; it's MPPs, period.

**Mr. John Yakabuski:** Can we not change the date?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you want to speak to the timelines, Jeff?

**Mr. Jeff Parker:** Yes, might as well.

**The Chair (Mr. Shafiq Qaadri):** We do strange things to the House calendar if you do that.

**Mr. Jeff Parker:** When we were outlining the schedule for the report writing, it's based on being able to report back by the date set by the House, which is May 21, being able to print it by that date, as well as having it simultaneously translated. So we're sort of out of time.

**Mr. John Yakabuski:** I understand.

**Mr. Victor Fedeli:** I would think that it should done in camera, as tradition.

**The Chair (Mr. Shafiq Qaadri):** Fine. So a closed session—sorry, Mr. Tabuns.

**Mr. Peter Tabuns:** We're fine with it being open.

**The Chair (Mr. Shafiq Qaadri):** All right. Any ideas? We may have to take a vote on this.

*Interjection.*

**Mr. Peter Tabuns:** It's just testimony.

**Mrs. Donna H. Cansfield:** It's fine.

**The Chair (Mr. Shafiq Qaadri):** What is fine? It doesn't matter?

**Mrs. Donna H. Cansfield:** What you said, open or closed.

**Mr. Bob Delaney:** I think by convention it's closed, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Fine. So are folks willing to follow convention? Is that the—

**Mr. Victor Fedeli:** Because we have our leader speaking right around that time, we're almost going to rely on staff being here, sadly. Which means—

**Mr. Taras Natyshak:** Not sadly.

**Mr. Victor Fedeli:** Not sadly that the staff is here.

**Mr. John Yakabuski:** Happily.

**Mr. Victor Fedeli:** Sadly, many of the members won't be able to attend, which means we'll have to rely more on our staff.

**The Chair (Mr. Shafiq Qaadri):** We appreciate the source of your sadness, Mr. Fedeli. So it would have to be an open session, then.

**Mr. Victor Fedeli:** Yes. We're going to have to, just because our leader is speaking.

**The Chair (Mr. Shafiq Qaadri):** Fine. Open, yes?

**Interjection:** Agreed.

**Mr. Victor Fedeli:** Yes. There's nothing new coming out. It's all—

**The Chair (Mr. Shafiq Qaadri):** All right. Before anyone changes their mind, it's now officially documented as open. The floor is closed on that.

Are there any further items before this committee?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** You'll be receiving the draft report on Friday. I will be in contact with all your offices to find out where you will be—because it's going to be a hard copy—to get it to you so that you can review it for the weekend. So please stay by your phones—or your staff—and we'll get it to you as soon as we can on Friday.

**Mr. Victor Fedeli:** Is it electronic?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** It'll be hard copy because it's confidential.

**The Chair (Mr. Shafiq Qaadri):** Hard copy, meaning printed.

**Mrs. Donna H. Cansfield:** So are you going to deliver them, then?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes. If anything, I can Purolate to your constituency offices if you're not—okay.

**Mr. Victor Fedeli:** And is that a confidential document?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** It will be a confidential document.

**Mr. Victor Fedeli:** To MPPs or staff?

**Mr. Peter Sibenik:** It would be to MPPs.

**Mr. Victor Fedeli:** So it will need to come to the office because many of us don't live here and we'll be home on Friday. It will need to be sealed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Right, and I'll just Purolate it to your office in your constituency. We'll figure a way to get it to you on Friday.

**Mr. Peter Tabuns:** They'll figure it out.

**The Chair (Mr. Shafiq Qaadri):** All right, if there's no further business, I thank the committee for a—



**Mr. Victor Fedeli:** No, I have the—

**The Chair (Mr. Shafiq Qaadri):** Yes, please. Go ahead, Mr. Fedeli.

**Mr. Victor Fedeli:** So two things we requested: When I was speaking with the Premier about PC doc 2, I was reading from her Hansard record in the Legislature, where she had said that the 36,000 records were—and then she added a qualifier—“responsive to the original motion of the estimates....” That was used by virtually every caucus member of the Liberal Party as well as cabinet members. I said that I would be asking for all of those Liberal talking points with respect to the release of the 36,000—

**The Chair (Mr. Shafiq Qaadri):** So the Chair takes that. And there’s a second item, you said?

**Mr. Victor Fedeli:** Yes, the letter that was shared by Ms. Cansfield. On the February 7 letter of the Premier to the Auditor General, in the first paragraph the last sentence says: “The committee decided at that time to exclude the cancellation of the Oakville gas plant from

their request.” The Premier’s referring to the Standing Committee on Public Accounts.

I would ask that this committee be issued the Hansard record of that public accounts committee meeting of September 5, where the Liberals repeatedly blocked the entire committee’s request to include Oakville in the Auditor General’s report, up to and including the last possible moment before the committee was collapsed. I would want that Hansard.

**The Chair (Mr. Shafiq Qaadri):** Sure. Mr. Fedeli, Hansard, as you know, is a public document, publicly accessible. If you want it printed, we can certainly undertake to do that.

**Mr. Victor Fedeli:** I would like it provided by the Clerk to all of us with the intention to discuss.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

There is no further business. I thank all committee members for being part of this remarkable day. The committee is adjourned.

*The committee adjourned at 1650.*





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#### Staff / Personnel

Ms. Karen Hindle, research officer,

Legislative Research Service

Mr. Jeff Parker, research officer,

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JP-18



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## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 6 May 2013

# Journal des débats (Hansard)

Lundi 6 mai 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés





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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Monday 6 May 2013

Lundi 6 mai 2013

*The committee met at 1208 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I call the meeting to order—the Standing Committee on Justice Policy. As you know, we're here for writing the interim report.

Before we begin, I would just like to welcome Mr. Leone back; we wish both baby and mother all health.

With that, the floor is now open, and I understand we're going to be going through page-by-page analysis of the interim report. I would invite opening comments or direction.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Sure, go ahead. You may introduce your report.

**Mr. Jeff Parker:** All right. As instructed by the committee, we've prepared the report, a summary of witnesses for the first 25 witnesses that have been heard by the committee. We've got up until April 30, because that was the last witness. They are organized chronologically rather than thematically. I don't believe we had any direction from the committee on that, but that's what we chose to do for simplicity's sake. I suppose that's about all we have to say, because it should be fairly straightforward. We welcome your comments.

**The Chair (Mr. Shafiq Qaadri):** Hard copies were couriered to everyone's constituency offices, so we naturally assume that you've devoured and digested the report by this a.m., and now the floor is open for any corrections, additions, objections and so on.

**Mr. Peter Sibenik:** I might add, Mr. Chair, that different research officers will speak to different summaries because different research officers prepared the summaries. But it'll be fairly seamless if you just go through it page by page.

**The Chair (Mr. Shafiq Qaadri):** Do you want the research officers to go and flag what sections—why don't we start that and give folks a little time. Yes, Mr. Delaney? Go ahead.

**Mr. Bob Delaney:** Chair, first of all, I'd like to compliment the research officers on coming up with a very readable document as a result of the testimony offered by the witnesses. While the government will have a number of suggestions, these are mostly in the vein of clarifications, in many cases adding something that the witness

said that might make the intent of the testimony clear. I'm sure some of the others will have some suggestions as well. At this point, we don't have a procedure on how to do it. Should we just propose a paragraph and make a suggestion as to what might be helpful to be added?

**The Chair (Mr. Shafiq Qaadri):** All right, Mr. Delaney. Well, the committee certainly accepts your compliments about creating a readable report, a readable document. That necessarily implies that many documents from the government are not readable, but in any case, I think we might just want to go by a witness-by-witness analysis here. So witness 1, as you'll recall, is Peter Milliken. His testimony summary is on page 1. As I said, we are now going through page-by-page analysis and would welcome you to do so.

**Mr. Rob Leone:** Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. Rob Leone:** For the sake of some clarity, I would like to be reminded what the instructions were in terms of creating—since I presume I was here when that happened, what were the instructions given to the researchers in terms of writing that?

**The Chair (Mr. Shafiq Qaadri):** I have no problem with repeating that. I would just probably hope that you might have gotten that from your own caucus. In any case, go ahead.

**Mr. Jeff Parker:** When we met, first in subcommittee and then as ratified by the whole committee—Tamara, I'm not sure of the date on that. It was decided to report back to the House by May 21. The committee decided to issue an interim report and that interim report would be made up of witness testimony up until and including May 2. So this is simply a summary of the testimony. There are no recommendations—

**The Chair (Mr. Shafiq Qaadri):** And the official document, item 5 of one of the subcommittee reports was, "That the interim report will be broken down by witnesses, as follows:

—a summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants; and

—a summary of testimony respecting the Speaker's finding of a *prima facie* case of privilege." And there are some other items, more organizational, around that.

**Mr. Peter Sibenik:** That's why each witness is organized under two subheadings: number one dealing with the involvement of the Mississauga and Oakville gas plants,



and then the second subheading will be disclosure of documents. So if witnesses had something to say under either of those, there will be two separate sections for each witness.

**The Chair (Mr. Shafiq Qaadri):** There's also, as you'll recall, a time constraint, meaning interim report issued, interim report approved, reporting to the House, translated into French etc.

All right. I believe the report is now overwhelming the committee. Do we need to do something?

**Mr. Bob Delaney:** Should we start?

**The Chair (Mr. Shafiq Qaadri):** Please.

**Mr. Bob Delaney:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Any comments on Mr. Milliken's summary, which is more or less pages 1, 2 and a couple of lines beyond that?

**Mr. Peter Sibenik:** Mr. Chair, if I could say something.

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. Peter Sibenik:** On page 2 of the draft report, if I could alert the committee to the first full paragraph beginning with the word "after." Towards the end of that paragraph, there's the statement, "Had this deal not been reached, Speaker Milliken would have ruled that there was a prima facie case of privilege." What Mr. Milliken actually says is that there would have been a breach of privilege. What I'm suggesting is to take out the words "prima facie case" and replace it with "breach of," which is what is in the actual committee Hansard.

Now, the difficulty that I have with that is that the Speaker doesn't make a finding of privilege; at the end of the day it's the House that makes that determination. So I may have accidentally slipped those words in there thinking that the Speaker's role is just to make a prima facie ruling. But when I looked at the record again over the weekend, he did say "breach of." Whether it was a slip on Speaker Milliken's part, I know not. But what I'm suggesting is that that line should read, "There was a breach of privilege."

**The Chair (Mr. Shafiq Qaadri):** I think you're ascending to a legal stratosphere there, so I'll accept that. In any case, go ahead.

Any other comments? Mr. Tabuns?

**Mr. Peter Tabuns:** Could you give us the full sentence, then? "Had this deal not been reached"—

**Mr. Peter Sibenik:** "Had this deal not been reached, Speaker Milliken would have ruled that there was a breach of privilege."

**Mr. Peter Tabuns:** I don't have a problem with that.

**The Chair (Mr. Shafiq Qaadri):** Okay. Any other issues on Speaker Milliken? Going once? Mr. Delaney?

**Mr. Bob Delaney:** Just before that, I'd like to suggest that there be a separate heading for each witness, summarizing whatever their recommendations might have been going forward.

**Mr. Victor Fedeli:** We didn't ask for that, did we?

**Mr. Bob Delaney:** Well, many of them offered it, and we often said—all three of us have said, "If you were doing this again, what would you have done differently?"

or "What would your recommendations be?" or "How could we improve this?" In one form or another, we've all asked them that.

Let's see if we can summarize—

**The Chair (Mr. Shafiq Qaadri):** I'm just being advised that that's the kind of redirect that will not really be followable in the timelines that are so far established.

**Mr. Bob Delaney:** I'm sorry?

**The Chair (Mr. Shafiq Qaadri):** It can't be done in time.

**Mr. Bob Delaney:** That's better.

**The Chair (Mr. Shafiq Qaadri):** Ms. Albanese?

**Mrs. Laura Albanese:** Isn't it really an important part of this committee to make recommendations to the House in regard to energy infrastructure in the future?

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns?

**Mr. Peter Tabuns:** I think we've already given instruction, summarized the testimony. The testimony is summarized. We can argue about whether it reflects it accurately—not that I think there's anything egregious, but there are places where I would modify things, as Mr. Sibenik has done. But if they made recommendations in their testimony, it's reflected in here.

**Mr. Victor Fedeli:** I agree.

**Ms. Karen Hindle:** Mr. Delaney, by and large, any of the recommendations that were made by the witnesses would be found in that first section, "Involvement with the Mississauga and/or Oakville gas plants." Typically, it would be found towards the end of that section, at least for those witnesses that we prepared.

**Mr. Bob Delaney:** That was evident in the drafting. I guess the essence of my suggestion was whether or not in the report we could highlight those things that, as you point out, are by and large present in the drafting and say, "These were their recommendations," and in so doing enable the reader to focus on that quickly.

**The Chair (Mr. Shafiq Qaadri):** This redirect of further itemization of recommendations can be done, but it needs the will of the committee. I'm sensing, at least from the two parties to my left, that that's not the case, so we will bypass that.

Are there any other issues regarding Mr. Milliken?

**Mr. Bob Delaney:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** In the second-to-last paragraph, page 2, the one that begins with "If the minister ultimately complied," may we please add Peter Milliken's quote on the subject of contempt? He responded to a question of whether the matter of contempt should be resolved if the minister had complied with the Speaker's ruling, and I think this quote is germane to it. He said, "If he complied with the demand for production of the documents, I would have thought it would have, yes.... If he complied, I don't know why there would be a breach. I don't understand that." That was one of the more important things that he said. Can we put that in the report?

**The Chair (Mr. Shafiq Qaadri):** Since it's a direct quote, that seems quite reasonable. It's not subject,

really, to interpretation by any parties. Any objections or issues there, gentlemen?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you know what quote it is? Do you know, Hansard, what page—

**The Chair (Mr. Shafiq Qaadri):** Can you cite the quote, Mr. Delaney, so we can show folks fast?

**Mr. Bob Delaney:** I don't have the page number; I'm sorry. It was toward the end of his testimony. The sentence would read, "If he complied with the demand for production of the documents."

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**The Chair (Mr. Shafiq Qaadri):** All right. So we can obviously search that out. That's fine.

Mr. Tabuns?

**Mr. Peter Tabuns:** I'd like to hear the exact quote and, frankly, the question that led up to it.

**Mr. Bob Delaney:** The question was whether the matter of contempt should be resolved if the minister complied with the Speaker's ruling. Mr. Milliken said, "If he complied with the demand for production of the documents, I would have thought it would have, yes ... If he complied, I don't know why there would be a breach. I don't understand that."

**Mr. Taras Natyshak:** What's the following sentence?

**Mr. Bob Delaney:** Well, that was it. That was the end of the thought.

**Mr. Peter Tabuns:** No, but—the folks who have the transcripts can tell us what the following sentence is.

**Mr. Taras Natyshak:** I mean, we're looking for context here, Mr. Delaney. I mean, we can cherry-pick out of the entire Hansard—

**Mr. Bob Delaney:** No, I'm not trying to cherry-pick here. I'm just trying to put in something that I thought was germane to the issue.

**The Chair (Mr. Shafiq Qaadri):** Can no one look this up electronically? Instantly?

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Okay, fine. We'll return to this issue. Any other issues on Mr. Milliken?

**Mr. Bob Delaney:** No, we're good.

**The Chair (Mr. Shafiq Qaadri):** Okay. So I take that after the resolution of this particular issue—the addition of the quote or not—then Milliken is essentially sealed.

Bruce Sharp: pages 3 and 4.

I think, just to remind the committee, as I'm sure you're going to say, Mr. Delaney, I don't think Mr. Sharp provided his, as I recall, the costing—itemized costing and so on—although we did, I think, write twice for that information. In any case, Bruce Sharp: Any issues? Yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, in the course of asking him questions, I asked Mr. Sharp a series of questions that asked whether or not he had ever worked for or consulted with or spoken to a number of different agencies. It would be important to summarize those and to note that Mr. Sharp had no involvement in these files and had not worked with the OPA, the ministry, TransCanada Energy or any of the other proponents.

**The Chair (Mr. Shafiq Qaadri):** All right. I'm sensing agreement there on the other side, so accepted.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Any issues with Bruce Sharp? Further?

**Mr. Bob Delaney:** One more, Chair.

**The Chair (Mr. Shafiq Qaadri):** Yes?

**Mr. Bob Delaney:** In the paragraph under "Involvement with the Mississauga and/or Oakville Gas Plants": Toward the end of his testimony, Mr. Sharp made mention of the fact that his calculations were based on, and I'm going to use his words, "documents publicly available." He also referred to some of his work as ballpark estimates, which he said wouldn't be certain until the plant was operational. But can it be noted that his calculations were based on "documents publicly available," to use his own words, at the time he did his estimate?

**Ms. Karen Hindle:** Mr. Delaney, on page 3, at about the middle of the page, right underneath the title "Involvement with the Mississauga and/or Oakville Gas Plants"—in this second sentence, it says, "Based on documents publicly available at the time of his testimony...." Is that sufficient? Or would you like more—

**Mr. Bob Delaney:** No. That is, in fact, sufficient for this purpose. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Great. Any issues with Bruce Sharp? Gentlemen? Yes? No? Bruce Sharp—okay; Bruce Sharp's sealed.

Mayor Rob Burton.

**Mr. Victor Fedeli:** Chair, I have one.

**The Chair (Mr. Shafiq Qaadri):** Yes?

**Mr. Victor Fedeli:** Somewhere in my questioning—now, I received this document at home on the weekend, so I wasn't able to go back to the transcripts from my home. Somewhere in the transcript, I asked the mayor how many times he met with the Premier, and I'd like that question in Hansard put in here, please.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

No issues, gentlemen? Ladies?

**Mr. Bob Delaney:** With Mayor Burton? Yes. One.

**The Chair (Mr. Shafiq Qaadri):** That's fine, but with Mr. Fedeli's issue, here.

**Mr. Bob Delaney:** No, no. That's fine.

**The Chair (Mr. Shafiq Qaadri):** Okay, good. Next, Mr. Delaney?

**Mr. Bob Delaney:** Chair, on page 5, at the bottom of the page, after it says that Burton and C4CA "secured promises from all parties to stop the plant," I'd like to add a quote from Mr. Burton. He said: "We enjoyed expressions of support from all parties, including Mr. Tabuns, and we appreciated the support of all parties. We were particularly encouraged by the strong statements" of "MPP Ted Chudleigh." May we add that quote, please?

**Ms. Karen Hindle:** Mr. Delaney, can you please repeat the beginning of that quote?

**Mr. Bob Delaney:** Okay. "We enjoyed expressions of support from all parties, including Mr. Tabuns, and we appreciated the support of all parties. We were particular—



ly encouraged by the strong statements that MPP Ted Chudleigh” etc.

**Ms. Karen Hindle:** Thank you, Mr. Delaney.

**The Chair (Mr. Shafiq Qaadri):** Once again, seeing this is direct quotes from Hansard, I think that’s probably allowable without much discussion.

Yes, gentlemen?

**Mr. Rob Leone:** Given the instructions of the committee, I’m not sure what the other parties have in relevance to this whole debate. I was inclined to say “strike the paragraph,” in the sense that you say, “Oakville residents, through its town officials and C4CA, secured promises from all parties....” I’m wondering why that’s relevant to what this committee’s been tasked with, essentially.

**The Chair (Mr. Shafiq Qaadri):** That’s actually a separate question. This is a summary of testimony and that’s what the gentleman said.

**Mr. Rob Leone:** Okay.

**The Chair (Mr. Shafiq Qaadri):** That’s what this is. It’s a summary of what the gentleman said.

**Mr. Rob Leone:** I’m asking the question, then. I mean, this is supposed to be a summary of what—when the committee has been instructed with two things, which are the release of documents, the disclosure of documents, and the estimation of costs. What relevance does it have to even talk about what, I would imagine, are very irrelevant issues in terms of what the other parties have suggested?

**The Chair (Mr. Shafiq Qaadri):** I appreciate your question, but I would just repeat again, item 5 of the subcommittee report. This is a summary of the testimony, what the individual said while at this committee. That’s what this is, and that reflects it.

**Mr. Taras Natyshak:** Summaries are nice if you want a condensed version of the activities of this committee, and they’re efficient in terms of trying to find some key points. But ultimately, the complete volume of testimony that’s appeared before this committee should be taken as gospel. I don’t understand—again, I’m new to this committee and this process, Chair. Summaries are one efficient method—but Hansard, in its full, complete, the volumes of it, should be taken as the full content of what’s happened here at committee. And in an era—

**The Chair (Mr. Shafiq Qaadri):** We 100% agree, and for those who’d like to wade through the entire volume of Hansard, more power to you.

**Mr. Taras Natyshak:** Chair, my question is: Okay, we’ve got dozens of pages here, they’re double-sided and that’s efficient as well. But we live in a digital era where I can’t imagine someone shouldn’t be able to access, on the periphery of this summary, the full content identified as what has happened at this committee.

Can we do something in that sense, where we say, “Yes, this is the summary, but this is the actual full content of the document”? It’s searchable—

**The Chair (Mr. Shafiq Qaadri):** Actually, it’s perhaps a good idea. If you’d like a flag, perhaps at the very beginning, with the website tracking etc., with dates and so on—

**Mr. Taras Natyshak:** As a note to reader—

**The Chair (Mr. Shafiq Qaadri):** That’s fine—as a note to reader. I think that’s quite reasonable. Do you want it specified, for example, per witness, per date and so on?

**Mr. Taras Natyshak:** I’d love to have discussion within the committee that says, yes, we’ve summarized it, but if you want to have every word accessible, it exists here, it’s specified, it’s searchable—

**The Chair (Mr. Shafiq Qaadri):** Understood. I’m just asking from an efficiency point of view. Can we put a single flag at the beginning of the entire report or do you want it per witness?

**Mr. Taras Natyshak:** I defer to the members of the committee for—

1230

**Mr. Victor Fedeli:** Can I just speak to that, Chair. When you go on, you can see it basically itemized, if I remember correctly. The date, the names—

**The Chair (Mr. Shafiq Qaadri):** Fair enough, all right.

**Mr. Victor Fedeli:** They’re basically there in a sort of table of contents.

**The Chair (Mr. Shafiq Qaadri):** So a single flag at the anterior end of this thing—

**The Clerk of the Committee (Ms. Tamara Pomanski):** At the end or the beginning?

**The Chair (Mr. Shafiq Qaadri):** Beginning.

**Mr. Victor Fedeli:** Yes, the beginning.

**The Chair (Mr. Shafiq Qaadri):** And the digital site—once, not per witness.

**Mr. Jeff Parker:** We can put a range of dates, so that anyone looking at the report can know that if they start on March 7, they can go from March 7 through to May 2.

**The Chair (Mr. Shafiq Qaadri):** All right. Now, have we exhausted the all-parties issue for Mayor Burton?

**Mr. Victor Fedeli:** By not adding what Mr. Delaney is asking for?

**The Chair (Mr. Shafiq Qaadri):** Actually, the other way around: by adding.

**Mr. Rob Leone:** Mr. Chair, I’m going to go back to my original point: We could sit here all day debating what should go in this—

**Mr. Taras Natyshak:** We will.

**The Chair (Mr. Shafiq Qaadri):** This is a votable issue. If we need to go to a vote, we’ll vote now.

**Mr. Rob Leone:** I’m going to make my point, at least, that we could be here all day to say that we want to add a quote here or a quote there. I would like, in the same vein, as we’re adding things to this document and taking some of the things out—certainly that would be a judgment call that I would make upon reading this document and the summary of the testimony as I remember it. We could be here all day doing that. But the point is, do we want to be that nitpicky? That certainly is obviously the prerogative of this committee to decide, but we’re now being asked to add quotes in because this person said this, but we’re not really sure about what the context

is because we don't have the volumes of Hansard that the Clerk has.

I just don't think we can do an adequate job saying what should be in this document or outside this document if you're trying to be very particular about what should be included or what shouldn't be. Certainly, I imagine that the quotes that Mr. Delaney wants to include are to reinforce an argument that he's trying to make and his party is trying to make, and he's certainly in his rights to do that. But I would also want the same sort of courtesy extended to me: that if I don't want something included in this report, we avoid including it.

So if that's the game that we're going to play today, we're going to be here for a very long, long time, and I—

**The Chair (Mr. Shafiq Qaadri):** That's fine. Mr. Leone, first of all, the committee is very pleased to be here all day, and beyond, if necessary. Secondly—

**Mr. Rob Leone:** To infinity and beyond.

**The Chair (Mr. Shafiq Qaadri):**—this is a votable issue, so it has to be done by the will of the committee. Thirdly, the committee will extend to you all courtesies; if you want things added or subtracted, bring them forth.

Mr. Delaney?

**Mr. Bob Delaney:** Chair, we are going to make what amounts to on average one to three short mostly-additions per witness. In the context of the volume of testimony, we feel that they are reasonable mostly-additions. They don't add significantly to the length of the report, and we feel that the points made are germane. We welcome our colleagues to do the same thing.

**The Chair (Mr. Shafiq Qaadri):** Sure. I would just also, once again, advise the committee: These are not quotes from any committee members—or, by the way, external bodies or organizations or people. These are quotes from the witnesses themselves, made in this room, so that's quite acceptable.

Mr. Tabuns?

**Mr. Peter Tabuns:** Mr. Chair, I'm not going to support the inclusion that Mr. Delaney is putting forward. I think the whole line of argument the government is using is one meant to obscure what happened here. We've got a summary of this testimony, and here I'd disagree with Mr. Leone; I'm going to just say leave it in. There are going to be more substantial issues that we're going to wrangle on in the course of this document, but I have to say that the government's strategy is neither transparent nor open. It's meant to obscure what happened in all of this.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. So leave as is, or do I need to go to a vote here?

Yes, Mr. Delaney?

**Mr. Bob Delaney:** I'd like to discuss this. Peter, that's not it at all. We are not trying to do any of the things that you have alleged. We're dealing with a report that is a first draft, and one that we think is going to be a clearer draft, through what we have made every reasonable endeavour to distill down to small insertions—and, I believe, in virtually every case, the exact quote from the witness.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone?

**Mr. Rob Leone:** Again, the point here is that we can be nitpicky on the testimony. Certainly, in Speaker Milliken's testimony there were some quotes that we could have pulled out to include in this document as well. The point here is simply that—and to Mr. Tabuns's point, the only point I'm referencing about removing a paragraph is that if we're going to be playing games, I'm prepared to play them as well.

But this isn't the way I think that this committee should be conducting itself. I could go find quotes on all these witnesses that support a position that we would want to take, but we decided as a committee, as I recall and as has been mentioned, to do this in a fair and impartial way, to come up with a summary of testimony as has been outlined. I'm frankly in support of what Mr. Tabuns has said and I won't be supporting the addition to this quote.

**The Chair (Mr. Shafiq Qaadri):** Fine. Are you supporting the removal of that paragraph which you said earlier?

**Mr. Rob Leone:** No, I'm going to withdraw that.

**The Chair (Mr. Shafiq Qaadri):** Fine. Do I take it that as it stands, we leave it—unless I need to go to a formal vote on that.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** As it is. We're not adding the quote, not removing it.

**Mr. Bob Delaney:** I think it misses something important said by Mr. Burton that many other people have said, and I would like to add that very brief quote to the report, Chair.

**The Chair (Mr. Shafiq Qaadri):** Understood. I will now take that as a vote. Gentlemen, ladies, I would now invite you to please vote. If you would like to add the inclusion of Mayor Burton's extra testimony as cited by Mr. Delaney and read into the record, would you please vote now in the affirmative. If you are against that, would you please vote now. Fine. That issue is now dispensed with.

Is there any further issue with Mr. Burton? Mr. Burton, going once? Burton is more or less sealed.

Mr. Wallace: This is now page 6 and beyond. Mr. Delaney.

**Mr. Bob Delaney:** I'll draw members' attention to page 9. It's paragraph 3. I'll refer you to after the line that begins, "The redacted portions were unrelated to the request." It's important to note that Mr. Wallace followed up his testimony and sent a letter to the committee on April 8. After having reviewed all the redactions, in his letter he states—and this is the part that I think is important—"I wish to confirm for the committee my continued belief that good-faith efforts were made to provide the information responsive to the committee's order and that the redactions removed only information that appeared to be unrelated to that order."

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. By citing that quote, are you suggesting to unite it to this report?



**Mr. Bob Delaney:** Yes, and in the interests of full disclosure, he did provide the committee with a copy of the unredacted records to show the committee that the redactions did not withhold information responsive to the request.

**The Chair (Mr. Shafiq Qaadri):** That's excellent. Are you suggesting that we should add this to the report?

**Mr. Bob Delaney:** Yes, please.

**The Chair (Mr. Shafiq Qaadri):** Thank you. All right, that's now before the—I take it that's a “no,” gentlemen?

**Mr. Taras Natyshak:** No for me.

**Mr. Victor Fedeli:** Yes, that's a no.

**Mr. Bob Delaney:** Is that any different from “No, that's a yes”?

**Mr. Taras Natyshak:** Yes, that's a no.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Again, to advise the committee, that letter was not officially part of the testimony, though I suppose it could be regarded as a continuation. That was really not part of the mandate. I think the researchers avoided documents received post-testimony, just to be clear.

All right. I will take that as a firm “no” from the majority of committee.

Are there any other issues with regard to Mr. Wallace?

**Mr. Victor Fedeli:** Chair, I want to move a motion, and I don't know the proper procedure. Do I just do it?

**The Chair (Mr. Shafiq Qaadri):** You might want to submit it in writing, preferably legible and/or typed, if possible.

**Mr. Victor Fedeli:** Well, I don't have a typewriter here; that tells you my age.

**Mr. Rob Leone:** It's a pretty clear motion, Mr. Chair.

**Mr. Victor Fedeli:** It's about 10 words.

**The Chair (Mr. Shafiq Qaadri):** Well, we don't take verbal motions, gentlemen.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Are the motions in order? All right. You may move that motion.

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**Mr. Victor Fedeli:** Chair, I move to accept the interim draft report as is.

**The Chair (Mr. Shafiq Qaadri):** All right. The motion is before the floor. It's open for discussion.

Mr. Tabuns?

**Mr. Peter Tabuns:** Chair, I have two amendments to that. The first is that on page 25, “Ms. Jenkins' allegations in her October 3, 3012, memo”—we just need to correct that date.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** I am informed, logically so, that that amendment is out of order as it essentially defeats the purpose of the original motion, as in accepting as is, and simultaneously editing defies the laws of gravity. So I would ask that—

**Mr. Peter Tabuns:** Then if Mr. Fedeli would withdraw for a moment, I will make a motion to amend this document.

**Mr. Victor Fedeli:** Withdrawn, temporarily.

**The Chair (Mr. Shafiq Qaadri):** Understood.

The floor is now open for amendments, but this is not requiring a motion. This is what we're doing here—amending, editing, upgrading this report. So I don't think we actually need a motion for that. That's what we're here to do in the first place.

**Mr. Peter Tabuns:** Mr. Chair?

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** I would suggest we return to editing now.

**Mr. Peter Tabuns:** Well, then, I am going to move a motion.

**The Chair (Mr. Shafiq Qaadri):** We would need it in writing.

**Mr. Peter Tabuns:** I am going to move that—

**The Chair (Mr. Shafiq Qaadri):** In writing, Mr. Tabuns, please.

**Mr. Peter Tabuns:** A fair request, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** And I might suggest the floor is open to all committee members for similar motions and amendments.

**Mr. Bob Delaney:** While Mr. Tabuns is doing his motion, which I appreciate—Chair, we spent a considerable amount of good-faith time with this. We are not producing suggestions that are unrelated to our joint task here. The amendments that we're proposing are intended to clarify not merely what the witness said, but to further our attempt to produce a document that accurately summarizes the testimony that we heard as of the end of April, and we've made some very serious ones. They are concise. They're simple to understand, and in each case they serve to amplify the point made by the witness.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Your points are noted. I would invite you to inspire the committee with the same viewpoint.

Mr. Natyshak?

**Mr. Taras Natyshak:** Chair, for the record, Mr. Parker, who has headed up the task of condensing the testimony here and summarizing, is indeed an independent, third-party vérificateur of our committee testimony here. Is that correct?

**The Chair (Mr. Shafiq Qaadri):** One assumes.

**Mr. Taras Natyshak:** And is fully capable and competent of summarizing the content of the testimony here?

**The Chair (Mr. Shafiq Qaadri):** Absolument, mon ami.

**Mr. Taras Natyshak:** I feel that as well. I am confident in what he's put together for committee, and I would say that given that, and despite the efforts put forward by the government, we should accept his report as complete and fulsome and with all good intent.

**The Chair (Mr. Shafiq Qaadri):** I believe that is the reason we are here today: to read, verify and add to or subtract from the report.

**Mr. Taras Natyshak:** Aside from any typos that we do encounter throughout.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Chair, I grasp where Mr. Natyshak is coming from, but, as he himself points out, despite the best efforts of the research staff, they found, admittedly, a typographical error, but an error of fact. I pass no judgment on the skill and the qualifications of the researcher. What we've done is to try to help them do a better job on our behalf. We are not making frivolous statements. Each request that we'll make of the committee is a concise, accurate request where we're either going to use the witnesses' own words—and not very many of them—and we would just like to be able to have our committee members listen to what we think is going to make this a better document. There is no other agenda.

**The Chair (Mr. Shafiq Qaadri):** I think Mr. Parker is overwhelmed by the vote of confidence and would like to weigh in.

**Mr. Jeff Parker:** First, just on the record, this was actually a work of six different researchers across: both table research and the legislative research service, so I thought we should get that on the record. I'm not here to take credit or blame for this en masse.

**Mr. Victor Fedeli:** You'd be a good politician.

**Mr. Jeff Parker:** The second thing is that we are here to serve the committee. So whatever the committee decides in terms of changes or not changes, that's what we're here for. We have no problem with no changes; it's entirely up to you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Parker.

**Mr. Peter Sibenik:** Mr. Chair, if I could also add: There are a number of typographical errors in the document, as Mr. Tabuns pointed out. There may be a few others. So whichever way the committee decides to go on this, just have that in the back of your mind, if you could, please.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you. When does this document cease being confidential?

**Mr. Peter Sibenik:** Well, it is before the committee at the present time. It's a committee exhibit at this particular point. We're going through it right now and we're in open session, so—

**Mr. Victor Fedeli:** So it's no longer a confidential document?

**The Chair (Mr. Shafiq Qaadri):** I think so; we're in open session.

**Mr. Peter Sibenik:** We're in open session, so I would say so.

**Mr. Victor Fedeli:** I'm not entirely reassured by, "I would say so."

**Mr. Peter Sibenik:** If we could wait, perhaps, until the committee Clerk returns, and then—

**Mr. Victor Fedeli:** Okay. I wasn't sure who would have the final wording on that.

**The Chair (Mr. Shafiq Qaadri):** All right, gentlemen, ladies, we will now—we've, I think, officially dispensed with Mayor Burton. I believe we're waiting—Mr. Tabuns, is it your motion that we're waiting for?

**Mr. Peter Tabuns:** Yes. It's being word-processed and brought forward.

**The Chair (Mr. Shafiq Qaadri):** All right. Well, I would suggest we wait, unless there's any other comment.

**Mr. Bob Delaney:** Can we go on to other parts of the report?

**The Chair (Mr. Shafiq Qaadri):** I would suggest that we—depending on what the motion states, Mr. Delaney, I think I likely need to wait for it.

**Mr. Bob Delaney:** Okay.

**Mr. Victor Fedeli:** I have a question, then, Chair, while we're navel-gazing. May 1, the letter to you from Peter Wallace: There's an underlined sentence down at the bottom.

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. Victor Fedeli:** When do we deal with that?

**The Chair (Mr. Shafiq Qaadri):** Again, the Clerk and I were discussing that. We're deciding what to do, whether—for example, as we did similarly with the OPA and Infrastructure Ontario documents—we'll give you a kind of receipted version of it.

Anyway, let's just address the first question. Do you want to just repeat the question?

**Mr. Victor Fedeli:** I have two questions. Number one, when does this cease becoming a confidential—for committee use only—document?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** As soon as it gets reported to the House by the Chair.

**Mr. Victor Fedeli:** So it's still, today, a confidential document for MPPs' exclusive use?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes.

**Mr. Victor Fedeli:** That's number one. Number two: In the letter of May 1 to the Chair from Peter Wallace, there's an underlined sentence. I would ask that the committee consider keeping the information confidential.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We received documents again last week. These are just the cover letters. Again, we still need direction on these documents as well.

**Mr. Victor Fedeli:** Is that the large one-inch document that we received?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** No, this is another one.

**Mr. Victor Fedeli:** We don't have this one yet?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I have this, but this is—

**Mr. Victor Fedeli:** Do we have this?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** No, just the hard—because we need direction from the committee how we're going to deal with confidential documents. So I'm just providing—

**Mr. Victor Fedeli:** I understand.

**The Chair (Mr. Shafiq Qaadri):** So, receipted confidentiality, a room with a view, for staff only etc.

**Mr. Victor Fedeli:** Yes; I understand.



**The Chair (Mr. Shafiq Qaadri):** All right. Motions are being typed up.

We're returning to Mr. Milliken. The quote that was cited has now been located. Peter, do you want to just read the quote for us?

**Mr. Peter Sibenik:** Yes. This is at pages 22 and 23 of the committee Hansard for March 7. The questions that I'm going to quote here are from Mr. Delaney. The responses are by Mr. Milliken, and here it goes. Question: "September 24, 2012, was the deadline provided by the Speaker for that production, and the minister claims that he complied with that deadline.

"Let's start off with one question. The minister ultimately complied. Shouldn't that end the matter?"

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Answer: "If he complied with the demand for production of the documents, I would have thought it would have, yes."

Question: "In your experience, would you find it counterproductive, then, for there to be a finding of contempt based upon an order with which the minister ultimately complied?"

Answer: "You mean after the minister complied, there was a finding of contempt?"

Question: "Yes."

Answer: "Oh. I guess if he complied, I wouldn't have thought there'd be a further argument, but I'm"—and then he was cut off at that point. So it's a question as to: Do you want that whole quote?

**Mr. Victor Fedeli:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Considering that there was a second, third and fourth document dump, it's obviously apparent that the minister did not comply.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone?

**Mr. Rob Leone:** That notwithstanding, I believe, if we look earlier in the Hansard, Speaker Milliken did note that he knew very little about this very issue. Hence, taking this and talking about hypotheticals is part of the problem with trying to take quotes out of context. Unless you have that context, you can't really provide a fulsome portrayal of what has happened, and I think that the researchers have done their best to try and avoid that. That's the issue that I think we're dealing with here.

**The Chair (Mr. Shafiq Qaadri):** All right. I take it that the will of the committee majority expressed is not to include these quotes.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney.

**Mr. Bob Delaney:** Chair, to the point just raised by Mr. Fedeli and Mr. Leone—and let's use Peter Milliken's own words: "I can see why you might have delays in getting chunks of documents because others were found that hadn't been located when the initial search was made or were in some other office or some other filing cabinet or somebody forgot about them and didn't produce them."

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

**Mr. Bob Delaney:** And Chair, it may be added that Mr. Milliken was a Conservative witness.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. All right, let's bring closure to this particular issue. If needed, I'll go to a vote. Do we wish to include this particular cited quotation by Mr. Milliken? I'll take that as a firm no or a majority no.

**Mr. Bob Delaney:** Chair, can I have a vote on that?

**The Chair (Mr. Shafiq Qaadri):** All right. We'll vote on this particular issue: the citation or inclusion of the quote cited by Mr. Delaney of Mr. Milliken. Those in favour?

**Mr. Bob Delaney:** And a recorded vote.

**The Chair (Mr. Shafiq Qaadri):** A recorded vote, please.

### Ayes

Albanese, Delaney, Del Duca.

### Nays

Fedeli, Leone, Natyshak, Tabuns.

**The Chair (Mr. Shafiq Qaadri):** Thank you. That is therefore not included, as the negative side wins on that. We'll now move to Mr. Tabuns.

**Mr. Peter Tabuns:** I move that the date "October 3, 3012" on page 25 be corrected to the real date. I think we're getting ahead of ourselves with this report.

**Mr. Jeff Parker:** We're forward-thinking.

**Mr. Peter Tabuns:** Yes.

**Mr. Taras Natyshak:** That's how long it's going to take to pay it off.

**Mr. Peter Tabuns:** You're an optimist.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** I'm advised that we are supposed to be following chronologically, or at least by order here, the testimony and the additions and subtractions.

Secondly, because this is essentially typographic and obviously and clearly an error, it does not necessarily require a motion. So I would suggest that we either accept that ruling or we can move to it. It's the will of the committee.

**Mr. Peter Tabuns:** Sorry, Mr. Chair. Just so I'm clear with your remarks, can we assume, those of us here, that that date will be corrected whether we move a motion on it or not?

**The Chair (Mr. Shafiq Qaadri):** I think that's reasonable.

**Mr. Jeff Parker:** We're happy to correct whatever typographical errors there are in the text, so long as they don't affect the meaning—commas, periods, dates—

**The Chair (Mr. Shafiq Qaadri):** Fine. So that one's clear. That's a simple date, putting us a millennium ahead. So we'll leave that.

**Mr. Peter Tabuns:** So Mr. Fedeli's earlier motion, which he withdrew and which he intends to bring back—

there is no difficulty when he brings back acceptance of the report with correction of that date?

**The Chair (Mr. Shafiq Qaadri):** That is a very good question. I think, technically speaking, there should probably be an amendment to that motion for that contingency of typographical errors.

**Mr. Peter Tabuns:** Well, I have attempted that, if you will remember, but if you're ruling now that you'll accept that amendment—

**The Chair (Mr. Shafiq Qaadri):** Actually, Mr. Tabuns, your motion was not that. Your motion was very specifically to edit a particular issue. It was not merely to correct typographical errors.

**Mr. Peter Tabuns:** I thought it was to correct that date, sir, but that being the case—

**Mr. Rob Leone:** He's saying all typographical errors that would be included.

**Mr. Peter Tabuns:** Fine, okay.

**Mr. Rob Leone:** That's what we should move an amendment on.

**Mr. Peter Tabuns:** Okay.

**Mr. Rob Leone:** Am I clear, Chair, on that?

**The Chair (Mr. Shafiq Qaadri):** Yes. Now, we can have that motion back from Mr. Fedeli, either in the body of the motion, this issue of typographical errors, or as an amendment—as you wish.

**Mr. Peter Tabuns:** Mr. Chair, before—

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, you do have another motion. Are you filing this now?

**Mr. Peter Tabuns:** Yes, I move that the report contain a list of documents requested from witnesses and received.

**The Chair (Mr. Shafiq Qaadri):** All right, that seems reasonable. Mr. Delaney?

**Mr. Bob Delaney:** Again, please?

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, again, please?

**Mr. Peter Tabuns:** I move that the report contain a list of documents requested from witnesses and received—which is consistent with questions that you've asked as well.

**The Chair (Mr. Shafiq Qaadri):** All right, do we have that all on file?

**Mr. Bob Delaney:** Just as a question of clarification: a list of documents requested from witnesses—the presence or absence of a comma is actually important here. Does that assume that we will see a list of documents not received and also received?

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Actually, that's a reasonable question, despite the sighs over there.

**Mr. Peter Tabuns:** I am assuming, Mr. Chair, that there will be a table which will show documents requested and documents received. One can deduce from absence of commentary that a document hasn't been received.

**Mr. Bob Delaney:** In other words, it will be noted if a document requested has not been received—

**Mr. Peter Tabuns:** Correct.

**Mr. Bob Delaney:** —but there will not be an absence of the reference to the document if the document has not been received?

**The Chair (Mr. Shafiq Qaadri):** So, fine, “received” and “not received”—both included, for clarity.

**Mr. Bob Delaney:** I'm good. I understand.

**The Chair (Mr. Shafiq Qaadri):** Understood. Is the motion acceptable to the committee? Do we need to officially vote—a friendly amendment kind of thing? All right, the motion is now accepted. So, Mr. Tabuns, we thank you for your addition.

Mr. Fedeli, if you'd like to move your original motion, with due respect to the typographical errors, you are welcome to do so.

**Mr. Victor Fedeli:** I think my page is missing there.

**The Chair (Mr. Shafiq Qaadri):** A page is missing.

**Mr. Victor Fedeli:** It had my handwritten note. I guess I could probably remember it. I move that we accept the interim draft report, with typographical errors corrected, as is. “As is” wouldn't quite be with typographical errors.

**Mr. Steven Del Duca:** “As will be”—

**Mr. Victor Fedeli:** “As will be.”

**The Chair (Mr. Shafiq Qaadri):** In any case, are we accepting this motion as in order? Do we need it written out better etc.?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, we will do the writing for you in this case. Will you just please restate it one more time?

**Mr. Victor Fedeli:** I move that we accept the interim draft report, with typographical errors corrected—

**The Chair (Mr. Shafiq Qaadri):** Period?

**Mr. Victor Fedeli:** Period.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. That motion is now in order and is now before the floor—and will, by the way, essentially conclude the committee hearing today. In any case, go ahead, Mr. Delaney.

**Mr. Bob Delaney:** It is a debatable motion, Chair.

**The Chair (Mr. Shafiq Qaadri):** Yes, of course.

**Mr. Bob Delaney:** It makes the presumption that we know at this point all of the either factual or typographical errors, or indeed whether there's an unintended editorial judgment. For example, I can refer to one which may be an unintended editorial judgment. On page 13, paragraph 1, in the drafting the language says “much-needed background”. Is it the intent of the researcher to make that “much-needed” value judgment, and should in fact the summary make a judgment on whether or not the testimony was needed?

So I understand where Mr. Fedeli is going, but the government came here prepared to offer all of these things to make that a stronger report, and I might point out that if we had just gone through the points, we'd be pretty much finished by now.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. We still have a motion before the floor. The floor is open for discussion, debate, comments on this motion: once again, to accept the draft report with typo-



graphical corrections. Are there any further comments on that motion?

*Interjections.*

**Mr. Taras Natyshak:** Call the question, Chair.

**Mr. Jeff Parker:** Okay, we just would need clarification on this motion, because we've had two more substantive changes made in the course of this committee meeting up until this point, one of which was to note to the reader at the beginning of the document to include Hansard; the second being that there would be an inclusion of a quote from Hansard in Bruce Sharp's testimony referencing questions working with, I believe, the OPA, that Mr. Delaney spoke about. So we have two substantive—

**Ms. Karen Hindle:** Mr. Fedeli, you had included—asked to include the discussions with the Premier.

**Mr. Jeff Parker:** Sorry, the third one. So we have three substantive corrections already made. Would this motion override those or would they simply be taken as done?

**The Chair (Mr. Shafiq Qaadri):** The point is good. I think, for clarity, the issue of the list of documents received, not received—that stands. So that is to be included in the final draft.

And the first quotation you mentioned from Bruce Sharp: I think the committee accepted that. So let's go with that.

What was the third one?

**Mr. Jeff Parker:** The third one was Mr. Fedeli's comments on a conversation with the Premier, with Mayor Burton—

**The Clerk of the Committee (Ms. Tamara Pomanski):** How many times he met with the Premier—Mr. Burton—

*Interjections.*

**Mr. Victor Fedeli:** That was accepted—

**The Chair (Mr. Shafiq Qaadri):** I see. I believe that's been accepted as well, so those stand. Are there any further issues, comments, before we move to the vote on this motion?

**Mr. Bob Delaney:** Chair, can I have a look at the motion on paper, please?

**The Chair (Mr. Shafiq Qaadri):** Yes, you may certainly have a look at the motion on paper. We will, in order to do so, take a ten-minute recess.

*The committee recessed from 1302 to 1314.*

**The Chair (Mr. Shafiq Qaadri):** Thank you. The committee is back in session. I understand, Mr. Fedeli, you're going to withdraw the first motion and then represent the second, updated—

**Mr. Victor Fedeli:** I am. This one sounds so much more intelligent. Thank you, Clerk.

I move that we accept the interim draft report as already amended to this point, subject to the correction of typographical errors by the research officer(s).

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Are there comments, issues with reference to this? Once again, with acceptance of this motion, I'd just advise the committee that we'll essentially end the duties of the committee for this day.

Yes, Mr. Delaney.

**Mr. Bob Delaney:** Chair, I would like to propose an amendment to Mr. Fedeli's motion.

**The Chair (Mr. Shafiq Qaadri):** Thank you, and we welcome it in writing, Mr. Delaney.

**Mr. Bob Delaney:** Okay. Let me just read it, then. In between the words "typographical" and "errors", to insert "and factual," and after that, to add one sentence, which is, "Each caucus may submit a list of such suggested inclusions or changes."

**The Chair (Mr. Shafiq Qaadri):** By when?

**Mr. Victor Fedeli:** It won't matter.

**The Chair (Mr. Shafiq Qaadri):** It depends on the vote, Mr. Fedeli. It's democracy.

**Mr. Bob Delaney:** By the end of today.

**The Chair (Mr. Shafiq Qaadri):** By the end of today. Mr. Delaney, can you read it again, please?

**Mr. Bob Delaney:** I move that Mr. Fedeli's motion be amended by (1) inserting the words "and factual" in between "typographical" and "errors," and (2) to add the sentence, "Each caucus may submit a list of such suggested inclusions or changes by 6 p.m., May 6, 2013."

**The Chair (Mr. Shafiq Qaadri):** Fair enough. That amendment stands before the committee. I take it that, in terms of the consideration of these inclusions/subtractions submitted by each caucus, you're essentially empowering research officers to make that decision?

**Mr. Bob Delaney:** Chair, I am suggesting that each caucus can submit to the research officer a list of suggested changes that are based on correcting the text or correcting factual errors.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, for restating that again. I'm asking: You're allowing research officers to make that determination?

**Mr. Bob Delaney:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. So, the amendment is understood by committee members? The floor is open for comments on the amendment.

**Mr. Rob Leone:** Can I ask, Mr. Delaney: In terms of when you say, "MPPs' offices," what are you talking about specifically?

**Mr. Bob Delaney:** How do you mean, "MPPs' offices"?

**Mr. Rob Leone:** You mean MPPs' offices and their staff?

**The Chair (Mr. Shafiq Qaadri):** I don't believe he used either of those phrases.

**Mr. Bob Delaney:** I don't recall using those phrases.

**Mr. Rob Leone:** I thought I heard that.

**Mr. Victor Fedeli:** What did he say specifically?

**The Chair (Mr. Shafiq Qaadri):** "Each caucus," which means each party.

**Mr. Rob Leone:** I believed he said "MPPs' offices." I withdraw, then.

**The Chair (Mr. Shafiq Qaadri):** I believe he didn't.

**Mr. Rob Leone:** I'm sure Hansard will tell us that one way or another. Someone said it. Katch heard it.

*Interjections.*

**Mr. Rob Leone:** And by “caucuses,” do we mean simply caucus members or caucus members’ staff?

**The Chair (Mr. Shafiq Qaadri):** Well, I think, Mr. Leone, that’s hopefully relatively clear. Each party.

**Mr. Bob Delaney:** Okay. Make it 6 and whatever it was I first said. If I said “6,” it’s 6.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Do committee members understand the amendment to this motion, as read? Fine. So, one addition, “and factual,” plus this business about the caucus suggestions, which, by the way, will be received by 6 p.m. today.

Are there any further comments or issues with reference to this amendment to Mr. Fedeli’s motion before we vote on the amendment? Mr. Tabuns?

**Mr. Peter Tabuns:** No further comment. Go to the vote, please.

**The Chair (Mr. Shafiq Qaadri):** Fine. Those in favour of Mr. Delaney’s amendment—

**Mr. Bob Delaney:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote.

#### Ayes

Albanese, Delaney, Del Duca.

#### Nays

Fedeli, Leone, Natyshak, Tabuns.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The amendment is not carried.

We move now to the main motion, Mr. Fedeli’s, which has already been read into the record. Unless there are further comments, we’ll proceed to the vote. Those in favour of Mr. Fedeli’s motion will please vote in the affirmative now. Those opposed? That amendment carries. That, de facto, is—

#### *Interjection.*

**The Chair (Mr. Shafiq Qaadri):** I see. There are just some last-minute housekeeping issues, which run as follows:

Shall the draft report, therefore, as amended, carry? Carried.

Who shall sign off on the final copy—the Chair or the subcommittee?

**Mr. Peter Tabuns:** The Chair.

**The Chair (Mr. Shafiq Qaadri):** Shall the report be translated?

**Mr. Peter Tabuns:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Shall the report be printed?

#### *Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Shall I present the report to the House?

**Mr. Peter Tabuns:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Incidentally, there is an opportunity: If there are dissenting opinions on any issue, they will be included in an appendix to the report if duly received by the Clerk and the Chair.

**Mr. Peter Tabuns:** By when?

**The Chair (Mr. Shafiq Qaadri):** Good question. You’re looking at 48 hours.

What does that mean specifically—at 6 p.m. Wednesday?

#### *Interjection.*

**The Chair (Mr. Shafiq Qaadri):** All right; now it’s 24 hours, so, end of day tomorrow. Dissenting opinions, if any, will be included in the report in an appendix.

All right. Are there any further issues or comments? We congratulate you on the adoption of your interim report. Committee is now adjourned.

*The committee adjourned at 1321.*









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#### Staff / Personnel

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Legislative Research Service

Mr. Jeff Parker, research officer,

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Mr. Peter Sibenik, table research clerk,

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of Ontario**

Second Session, 40<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Tuesday 7 May 2013

**Journal  
des débats  
(Hansard)**

Mardi 7 mai 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

Privilèges des députés



Chair: Shafiq Qaadri  
Clerk: Tamara Pomanski

Président : Shafiq Qaadri  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICY

Tuesday 7 May 2013

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT  
DE LA JUSTICE

Mardi 7 mai 2013

*The committee met at 0828 in room 151.*

## MEMBERS' PRIVILEGES

## MR. DALTON MCGUINTY

**Le Président (M. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, le député de l'Assemblée législative pour la circonscription d'Ottawa-Sud et l'ancien premier ministre d'Ontario, the Honourable Dalton McGuinty.

Mr. McGuinty, I would invite you to please be sworn in by our able Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Dalton McGuinty:** I do.

**Le Président (M. Shafiq Qaadri):** Merci, monsieur McGuinty. Comme vous le savez, vous avez cinq minutes pour vos remarques introductoires. Je vous invite à commencer.

**Mr. Dalton McGuinty:** Merci, monsieur le Président. Good morning and thank you for this opportunity. I wanted to appear before you this morning to tell you why I made the decision to relocate two gas plants and how I came to realize that the communities of Mississauga and Oakville were right and that our government was wrong.

I've always believed that leadership is about trying to do what's right in any situation. That ultimately is what the people of Ontario elect all of us to do. That's what leadership means to me. Whether it's tax reform like the HST or energy infrastructure like gas plants, Ontarians should be able to count on us to do the right thing.

In Oakville and Mississauga, we were faced with a circumstance where gas plants were sited right next to schools, condominium towers, family homes and a hospital. That wasn't right. All parties agreed on that, and we needed to fix it. We all agreed on that too. Most importantly for me as Premier was to acknowledge our mistakes and fix them. We got 17 gas plants right, but we got Oakville and Mississauga wrong, so we needed to fix that.

Moving two gas plants cost more than any of us would have liked, and in return, for the next 20 years children won't be going to their neighbourhood school in the shadow of a smokestack, a polluted airshed won't be-

come more polluted and we'll still have enough electricity to power our homes and economy.

There are two developments which, for me, dramatically changed the public policy environment that governs acceptable locations for gas plants. First, in 2009, our government brought in some of the toughest rules in the world relating to wind turbines. Our new law in Ontario requires that wind turbines not be located within 550 metres of a residence. But at that time, no mandatory setback was introduced for gas plants, and we still don't have one. In the case of the Oakville gas plant, this meant that in a location that could not legally accommodate one wind turbine, we were planning to install a 900-megawatt gas plant—that's one of the biggest in North America—400 metres from the nearest home, 320 metres from the nearest school and 65 metres from the closest offices.

The second change in our public policy environment happened in 2010, when a private member's bill gained unanimous support for creating mandatory setbacks for gas plants. MPPs were rightly giving expression to new public expectations, and leadership required that I make the right decision based on our new laws and our new expectations. That's why, in the fall of 2010, I decided it was right to move the Oakville plant—a decision supported by all parties. In 2011, we were again presented with a difficult choice: a gas plant project in Mississauga that had been dormant for over five years had come to life. An evaluation was undertaken by the Ministry of the Environment to determine if environmental approvals should be rescinded. But it was determined that the minister had no ability to rescind approvals, despite the fact that this gas plant was to be located near a hospital, in a residential community and where two new condominium towers were being built. Again, not a single emission-free wind turbine could have been built on that site. This all happened in the run-up to the election campaign. When the campaign began, the people of that community repeated their argument that the plant didn't belong there, and we all listened. All three parties recognized the people of Mississauga were right and that my government was wrong. And all three parties promised to cancel the plant, if elected.

I made the decision to relocate two gas plants because it was the right thing to do. I want to acknowledge that the cost to move these plants is higher than anyone would have wanted. Our government's ability to get the right numbers out in a timely way has been less than stellar.



And we have struggled to produce documents in a timely way. All of this is true. But I strongly believe that locating these gas plants in those communities was wrong, and relocating them is right.

I'm pleased to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. McGuinty.

I would now offer the floor to the PC side: Mr. Fedeli, 20 minutes.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good morning, Premier.

**Mr. Dalton McGuinty:** Good morning.

**Mr. Victor Fedeli:** You have acknowledged that it's your decision to move the gas plants and I must say that, Premier, while you may have masterminded the heist, your henchmen committed the crime and drove the getaway car.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, I would once again invite you to use parliamentary language, particularly in this case, as we have a sitting MPP before us.

**Mr. Victor Fedeli:** Let's talk about the commitment of this scandal. If you look at your documents, page 5 of PC document 1, we're going to get to the people involved with you in the execution of this act. Do you have PC doc 1, page 5, there: "The following members of the executive council ..."?

**Mr. Dalton McGuinty:** Yes, I do.

**Mr. Victor Fedeli:** Could you read the members listed there who signified approval on July 29?

**Mr. Dalton McGuinty:** I'm reading from a cabinet document, I believe, Mr. Chair, and I'm pleased to say that this was made available by me at the request of the committee. The ministers mentioned in the document, of course, are Ms. Wynne, Mr. Duguid, Mr. Bentley and Mr. Duncan. This, as I recall, was to give life to a commitment made by all parties to proceed with the cancellation of the Oakville gas plant.

**Mr. Victor Fedeli:** Again, you masterminded this, but let's talk about the people who were involved with you in implementing this act. The first name that you mentioned was Ms. Wynne, our current Premier. Let me read from her testimony here: "I was part of the cabinet, and so I was part of implementing that decision and that meant that the document that I signed was part of that implementation of that decision."

So let's look a little deeper at her involvement that she testified to recently. On July 29, 2011, she signed the cabinet minute. On August 10, 2011, she reported in to cabinet; October 3, 2012, the report back from the treasury board re negotiations on the mandate approved for TransCanada; and October 20, 2011, a high-level discussion on the Mississauga cancellation. There are four more—on November 21, 2011, a \$10-million settlement for Keele Valley. November 24, 2011, the Minister of Energy provided a high-level update on the ongoing discussion between the OPA and Eastern Power. This is all the involvement of Premier Kathleen Wynne. Two more: May 30, 2012, involved in the update on the treas-

ury board negotiations to settle with EIG; and August 15, 2012, report on treasury board—order the approved \$180-million for Greenfield South and \$10 million for Keele Valley.

The next person you had mentioned was Mr. Duguid. His involvement we'll skip over for a moment, and go down to Minister Bentley, at the time the energy minister. Here's his testimony: "Over the coming days and weeks you will read and hear lots of numbers related to the cost of the plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million."

The final one you mentioned was then-Minister Duncan. Here's his exchange in the estimates committee with NDP member Gilles Bisson. He asked what compensation was provided to Eastern Power, and Mr. Bisson talked about \$180 million. Then Mr. Duncan went on to say, "Oftentimes, there are variances on a project of that order of magnitude: it could come in at \$178 million; it could come in at \$182 million." Mr. Bisson asked him, "What about ... penalties?" Mr. Duncan's answer is, "Not that we're aware of." Mr. Bisson said, "So you're not expecting anything else other than minor variances over the \$180 million on Mississauga?" Mr. Bisson went on to ask, "Do you expect any additional claims or penalties?" The answer from Mr. Duncan was, "No. The \$180 million should cover all of that. That was part of the comprehensive agreement."

Finally, we have one more accomplice. That would be Mr. Colin Andersen. I asked him, "So you knew there were other costs—other than the \$40 million sunk costs—presumably in the hundreds of millions?" Mr. Andersen replied, "We all knew that those were going to be there and that they were going to be significant, yes." I asked him, under oath, "The government knew that the total cost was more than \$40 million," and his answer was, "Absolutely, yes."

So I say to you, Premier, when did you know and when did your cabinet know that the costs of Mississauga were more than \$180 million—\$190 million, as later reported—and more than \$40 million for Oakville?

**Mr. Dalton McGuinty:** Mr. Fedeli, you've provided me with a lot of information, and I understand that there's a certain narrative that you favour, but let me say this: Somebody once said, "We shouldn't try to outsmart the truth, we should just let it breathe." The truth of the matter is, I made a commitment to relocate two gas plants because I thought that was the right thing to do. I believe we all share the opinion that it would be entirely inappropriate to locate in any of our ridings large gas plants immediately adjacent to schools, homes, hospitals and offices. That would be inappropriate; it would be wrong. It's out of keeping with our modern-day standards of law and our expectations.

We have worked hard, sincerely, earnestly, as a government to deliver on those commitments. Have we done so perfectly? We have not. There has been, notwithstanding your intimations and direct allegations—subterfuge, conspiracy or malfeasance. There has been some stumbling along the way. There has been some ineffect-



iveness on our part. We have a government and a bureaucracy and an Ontario Power Authority that consists exclusively of people, with all their noble strengths and all of their human frailties.

**0840**

So you can lend whatever complexion you want to it, but at the end of the day, what we're talking about is a government that was working as hard as it could to deliver on a commitment to relocate gas plants that were wrongly located in the first instance.

**Mr. Victor Fedeli:** Premier, let me ask you the question again, then.

**Mr. Dalton McGuinty:** I regret that we did not locate those plants properly at the outset. I regret that it took us so long to move on these decisions, but those are the facts.

**Mr. Victor Fedeli:** Let me ask you the same question again, then. When did you know and when did cabinet know that \$40 million was not the number, and \$190 million was not the number?

**Mr. Dalton McGuinty:** We always relied on the \$40 million and the \$190 million. I can speak for myself. In my office, we don't have the capacity to make calculations associated with these kinds of contractual arrangements, or to make these kinds of estimates as to what ultimate costs might be. I knew going into this that when I said that we were going to relocate gas plants, I did not have at my hand the costs associated with that, that we were going to have to rely on the Ministry of Energy, and that there was going to have to be negotiations aided by the Ontario Power Authority, which would help us ultimately land on a particular figure. So the only figures that I used were those provided to me by the Ministry of Energy. Those were \$40 million. At one point I was told \$180 million. I think the following day I was told, "No, our new number is \$190 million." So I went out and said, "No, the number's not \$180 million, it's \$190 million."

I know there's been a tremendous amount of confusion around the numbers. Our primary source for these numbers has been the Ontario Power Authority.

**Mr. Victor Fedeli:** But Premier, the Ontario Power Authority has told us, under sworn testimony, "The government knew that the total cost was more than \$40 million." They also told us that it was your staff that was interfering in the negotiations.

So how can you say that they didn't know the cost was \$40 million, when it was indeed they who were doing the negotiating? And how can you say they didn't know it was \$190 million when it was indeed they who were interfering, as the OPA has said under sworn testimony; that your staff continued to interfere in the negotiations? They have sworn under testimony here that in July 2012, you would have known that the OPA had already paid \$245 million at the time of the \$275 million. That's sworn testimony that your office would have known that, and that your office would have known it was more than \$40 million.

I asked Premier Wynne 20 times in 20 minutes when did she know and when did cabinet know, and never got

an answer. With my caucus member Ms. MacLeod, we asked a total of 32 times in 30 minutes, the same question that you're evading.

When did you know and when did cabinet know that \$40 million was not the right number?

**Mr. Dalton McGuinty:** Any number that was publicly expressed by either the Ontario Power Authority or the Ministry of Energy that was different from \$40 million, I would have learned when you would have learned; when those numbers were made public.

**Mr. Victor Fedeli:** What you're saying is, your staff didn't tell you that they were negotiating all along with TransCanada and with Greenfield? There's sworn testimony—

**Mr. Dalton McGuinty:** No, there was no negotiation—

**Mr. Victor Fedeli:** There's sworn testimony—

**Mr. Dalton McGuinty:** My staff was not negotiating.

**Mr. Victor Fedeli:** There's sworn testimony that they were interfering.

**Mr. Dalton McGuinty:** My staff was not negotiating with TransCanada.

**Mr. Victor Fedeli:** So when the OPA told us that your staff was interfering in negotiations, that's not correct?

**Mr. Dalton McGuinty:** I had a couple of staff members who were screened out—

**Mr. Victor Fedeli:** Yes.

**Mr. Dalton McGuinty:** —for good reasons. But as I recall very distinctly, Mr. Jamison Steeve came to see me because he had received an overture from TransCanada, which basically said, "Can we chat about this?" My specific instructions to Mr. Steeve were: "Yes, okay, I think it's a good idea. Let's keep the lines of communication open, but you're there to listen. You can't enter into negotiations."

**Mr. Victor Fedeli:** So when Colin Andersen said that everybody in the government knew it was \$40 million, when you and your cabinet were involved in the signing of an MOU—the memorandum of understanding—that pegged this at more than \$40 million, you're still sticking to that \$40 million.

I'll ask you again: When did you know that the total number was higher than \$40 million and that the total number was higher than \$190 million?

**Mr. Dalton McGuinty:** When the auditor told us, and when the OPA changed its figures.

**Mr. Victor Fedeli:** Yet the auditor told us that you knew back in July that the OPA spent at that point—months before the announcement, they had already spent \$245 million, yet your ministers were out there swearing in estimates that it was \$190 million.

**Mr. Dalton McGuinty:** We were using the numbers that we were told were accurate.

**Mr. Victor Fedeli:** But you negotiated the memorandum of understanding that pegged it at more than \$40 million.

**Mr. Dalton McGuinty:** I didn't have access to those numbers. The numbers that I used—

**Mr. Victor Fedeli:** So your staff did.



**Mr. Dalton McGuinty:** The numbers that I used were the same numbers that Premier Wynne has used, that were made available to us by the Ministry of Energy. I can tell you that as a matter of practice, if I ever go out to a scrum to chat with the media about any particular number, I have the same question that I always have for my staff: "Are we sure of this number?" I mean, there's a lot of interest in this particular issue, to say the least, so when they said, "It's going to be \$40 million," I said, "Are we sure of this number?" And the same with respect to the \$180 million. But then I learned later on that in fact we were not sure of the \$180 million, that it was then \$190 million.

Now, back to the OPA—

**Mr. Victor Fedeli:** So did anybody know what was going on?

**Mr. Dalton McGuinty:** Back to the OPA, if we might. At one point in time, we were told it was \$40 million. Then, I understand, more recently we were told, actually, by the OPA that it could be anywhere between \$33 million and, I think—

**Mr. Victor Fedeli:** And now \$310 million. Actually, \$1.1 billion minus \$700 million in savings. But Colin Andersen testified under oath last week—and I'll quote: "Everybody" knew "including the minister," that the Oakville tab would be more than \$40 million. That would include you and cabinet. Was Colin Andersen lying under oath?

**Mr. Dalton McGuinty:** My sense of what Mr. Andersen was saying in that—because I did not know and caucus did not know and cabinet did not know; I can assure you of that—was that perhaps the production of documents that had been made available, the memorandum of understanding itself and the contracts, somehow might have made this clearer.

One thing I did note with interest is that you had Minister Bentley here, I believe it was just recently; I reviewed his transcript in some detail. There were 12 pages devoted to the issue of costs. It appears to me that there are a number of different ways to in fact calculate these costs.

**Mr. Victor Fedeli:** Look, the auditor told us how we're going to calculate this, so we'll know that at the end. But let me repeat his one sentence: "Over the coming days and weeks you will read and hear lots of numbers related to the cost of the plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million." Your government continued to stand by the \$40-million number, even though you and your government knew that number was not true, because you and your government signed the MOU.

**Mr. Dalton McGuinty:** I don't doubt Minister Bentley's sincerity in making that statement then—

**Mr. Victor Fedeli:** But what about accuracy?

**Mr. Dalton McGuinty:** —but if you take a look at his testimony—

**Mr. Victor Fedeli:** I was there.

**Mr. Dalton McGuinty:** Right. And I read the transcript.

**Mr. Victor Fedeli:** Believe me, he sticks by the \$40-million—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, please allow the witness to answer at some point.

**Mr. Dalton McGuinty:** And what he's saying is—

**Mr. Victor Fedeli:** Well, I'd like an answer to the question. I've asked the question several times: When did you know and when did your cabinet know the \$40 million and the \$190 million were not true?

**Mr. Dalton McGuinty:** When those were made public by the auditor.

Now, I want—

**Mr. Victor Fedeli:** Even though you negotiated the memorandum of understanding.

**Mr. Dalton McGuinty:** I want to return to the issue—

**Mr. Victor Fedeli:** But I'd like an answer for that.

**Mr. Dalton McGuinty:** I understand that.

**Mr. Victor Fedeli:** You negotiated the MOU that said it's going to be higher than \$40 million. When did you know it was going to be higher?

**Mr. Dalton McGuinty:** You're asking me a series of questions—

**Mr. Victor Fedeli:** One question: When did you know?

**Mr. Dalton McGuinty:** No—and you want to be selective in terms of which I answer. I'd rather answer them in order. So I want to come back to Minister Bentley and the sincerity with which he presented the information before this committee more recently. He talked, as I understand it—and you folks would have more expertise in this now than I, because of your opportunity to sit at this committee—about dividing the costs into two categories. One was essentially the sunk costs, for which there was no value received and returned. That would be, for example, the \$40 million. The other cost, he said, would form part of, I think his language was "a commercially reasonable new contract." That's how he divided those. So was the new contract more expensive than the old one? Yes, it was. And that's how he divided up those costs.

The auditor obviously brings a different approach. I think at the end of the day, you and I should be relying on the auditor, and I'm pleased and proud of the fact that Premier Wynne has invited the auditor to take a look at both gas plants.

0850

**Mr. Victor Fedeli:** We asked your deputy minister—I asked him—Serge Imbrogno, did the minister know the full cost, the more than \$40 million full cost? Mr. Imbrogno's answer, under oath, was, "We would have informed the minister of all ... components of those costs."

You're the one in the Legislature who continued to say, and in the Toronto Star wrote, "total cost," not "sunk cost," not, "There's going to be more." You, your minister, all your other people that were involved in this continued to say "total cost." Now we know that that total cost is not true. I want to know, when did you know that total cost was not true, knowing that Serge Imbrogno



from your energy ministry and Colin Andersen from the OPA and dozens of other witnesses have sworn under oath that you and your cabinet would have known considerably earlier that that's not accurate? I want to know from you, what date did you know?

**Mr. Dalton McGuinty:** Now, you've asked me this question a few times. I'm going to give the same answer. Again, you keep saying that I'm not giving you an answer, but perhaps you don't like the answer. But—

**Mr. Victor Fedeli:** No, no. I don't believe the answer, to be perfectly frank. I don't believe your answer. We have sworn testimony from the most senior possible government officials that tell us you knew the answer earlier, yet you're sticking to the September 24 date.

**Mr. Dalton McGuinty:** Again, this may not accord with your narrative—

**Mr. Victor Fedeli:** Or the facts.

**Mr. Dalton McGuinty:** —but we shouldn't try to outsmart the truth.

**Mr. Victor Fedeli:** The truth of the sworn—are you telling me, Premier, that all—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, you've asked the question. I would invite you to please allow the witness to answer.

**Mr. Dalton McGuinty:** We should just—

**Mr. Victor Fedeli:** But I would like an honest answer. We've got a dozen witnesses who say one thing and the Premier—

**The Chair (Mr. Shafiq Qaadri):** That's also unparliamentary and unbecoming for this committee, particularly with this witness, Mr. Fedeli.

**Mr. Victor Fedeli:** But we have a dozen witnesses who are swearing under oath to one thing and this Premier telling us another. I'm trying to get to the bottom of this, Chair.

I'll ask you again: When did you know and when did your cabinet know?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Dalton McGuinty:** I knew of the latest number, which has now been made public by the auditor, when he made that number public. I knew of the differentiation from the \$40 million when the OPA changed its number for the, I guess it was, fifth time.

**Mr. Victor Fedeli:** But the OPA told us that there were buckets of costs, and Mr. Livingston told us that that memorandum of understanding was ratified by cabinet. That's before the public declaration of the \$40 million, so you and your cabinet must have known. According to Mr. Livingston, it was ratified. When did you know?

**Mr. Dalton McGuinty:** I'm telling you again, we found out about these numbers when they were made public by the OPA and when they were made public by the auditor. Prior to that time—

**Mr. Victor Fedeli:** So Shelly Jamieson is wrong; JoAnne Butler is wrong; Livingston is wrong; Imbrogno is wrong; Andersen is wrong. They're all wrong.

**Mr. Dalton McGuinty:** Prior to that time, the only numbers that I used were numbers that were given to me.

They were given to me by the Ministry of the Environment. I assumed they would go in concert with the OPA.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Mr. Tabuns, the floor is yours. Twenty minutes.

**Mr. Peter Tabuns:** Mr. McGuinty, good day.

**Mr. Dalton McGuinty:** Hello.

**Mr. Peter Tabuns:** The Oakville decision: Your story that you present is very different from what people in Ontario understand and certainly what we've come to understand as we've gone through documents. A private company brought forward a plan. They ran into huge difficulties dealing with Oakville. They came to you. It was clear that what they wanted was to have you overrule Oakville's municipal bylaws—pretty clear testimony from staff in your office. This posed huge political problems, problems related to your fortunes in the Oakville seat. Why did you, really, gamble on a billion-dollar expenditure in Oakville to protect the seat of one member?

**Mr. Dalton McGuinty:** Thanks for the question, Mr. Tabuns. I'm trying to be very clear that my motivation, both with respect to Oakville and Mississauga, had to do with the appropriateness of foisting gas plants into communities and in locations which threatened the health and well-being and environment of those communities. You would have heard, as I, from people living in the community. There were strong representations made. We were talking about, in the case of Oakville, a 900-megawatt gas plant being located on a site which could not lawfully accommodate a single wind turbine. Nine hundred megawatts would be one of the biggest gas plants in all of North America. It was going to be located near schools, offices, homes. That was unacceptable. You're very—

**Mr. Peter Tabuns:** You knew that already.

**Mr. Dalton McGuinty:** You're very familiar with the Clarkson airshed; you're very familiar that that was one of the most stressed airsheds in Ontario. You may even be familiar with the fact that the highest rate of childhood asthma is found in that community, in that airshed.

**Mr. Peter Tabuns:** Mr. McGuinty—

**Mr. Dalton McGuinty:** So when representations were made by the community, I didn't speak to the issues associated with the economic complexities and business issues associated with this; my concern was for those people and the fact that we had wrongly located a plant on that site.

**Mr. Peter Tabuns:** Well, when we go through the emails, when we go through the correspondence within your staff, we get a very different story. What we see is we've got this problem because the city's blocking this plant, and we don't want to get into the kind of fight that you would need to overrule them. In northern York region, you put down a plant in a flood plain, with a huge public outcry. It didn't appear to have affected your assessment. In my riding, Toronto-Danforth, south Riverdale has had historic huge air quality problems. There was a huge outcry there, a big mobilization. It didn't stop you. Oakville—that's a Liberal seat. There,



we had a very different approach to the whole question of rejection.

I'm going to go on, though. Why did you tell Mr. Steeve to negotiate with TransCanada? Why didn't you take the normal route, go to the Ontario Power Authority, go to the Ministry of Energy, and say, "We have a problem here. See if you can deal with it"? Why was it your cabinet staff, your Premier's office staff, who were engaged in these discussions?

**Mr. Dalton McGuinty:** First, I want to come back to something you said, because you've left the impression that somehow I was motivated by private economic interests, and that somehow influenced my decision on Oakville. I just want to make it perfectly clear that the only reason I decided that we should be relocating the Oakville plant and the only reason we should be relocating the Mississauga plant was because those plants were wrongly sited and would compromise the health and well-being of people in those communities.

As to the question of Mr. Jamison Steeve and whatever mandate he had, it did not consist of negotiations. His job and Sean Mullin's job—I know Mr. Mullin's been before this committee as well—was to help me interact with stakeholders of all varieties right across the province on a whole bunch of different files. I simply could not meet with all these people. It was impossible. So their job was to reach out and to continue to keep an open dialogue. That was office policy. "Whatever happens, keep talking," is one of my mantras.

So we did that, and in one particular instance, I do know that TransCanada invited Mr. Steeve to enter into a conversation. I said, "All right, you can do that, but there are no negotiations to take place. Sit down and listen, and let's see what it is that they want to talk about."

**Mr. Peter Tabuns:** In fact, when we see the notes, we see TransCanada talking about needing to be made whole, discussion about how letters are going to be provided, what's going to be in those letters. There seemed to be deep involvement in making sure—the letters that actually got TransCanada to back off, got them to not go to court, were tied up with your staff. There's no question in my mind, having gone through that.

**Mr. Dalton McGuinty:** My understanding of the "keep whole" language is that comes exclusively from the other side, and if I was on the other side, that's language that I would certainly want to use. When I sit down with a government and we're going to enter into a negotiation subsequently, I would certainly want to be "kept whole." I can understand why they're using that language. But that's not language that we used.

**Mr. Peter Tabuns:** Well, in effect, the letter that you provided to TransCanada on October 7 in order to keep them from going to court set aside all of the legal defences that the OPA would have used to make sure that the people of Ontario were kept whole. Were you aware, were your staff aware, that the OPA had said, "You can cancel this quickly at high cost or you can approach this very slowly and it will cost you an awful lot less"? Were you aware? Did you ignore that advice?

**Mr. Dalton McGuinty:** Sorry. Is this the OPA you're saying said this?

**Mr. Peter Tabuns:** Yes.

**Mr. Dalton McGuinty:** No, I would not have had—

**Mr. Peter Tabuns:** Did no one in your—

**Mr. Dalton McGuinty:** I would not have had that kind of communication. I would expect that the ministry would be doing that and that the ministry, from time to time, would report in to cabinet. But in terms of the specifics of any ongoing negotiations, we were only kept current at a very high level.

0900

**Mr. Peter Tabuns:** So your staff weren't talking to the OPA about the risks that we were facing and that we would be taking on?

**Mr. Dalton McGuinty:** My staff did not enter into negotiations because they were not allowed to enter into negotiations, and ultimately, when we got down to the short strokes, as I recall, Shelly Jamieson screened out Mr. Steeve and Mr. Mullins and perhaps one other because negotiations were going to begin in earnest and that was the best way to manage that. Ms. Jamieson reported that in to me and I thought that was a smart thing for her to do.

**Mr. Peter Tabuns:** Actually, as I listened to her, their presence in this file became increasingly problematic. Their presence in this file created risk for the government of Ontario. It created risk for them personally as well. I thought she was smart to protect Ontario. That's what she was acting to do, something that your government hadn't done. When we asked Jamison Steeve if you knew what it was going to cost to cancel the Oakville plant, he said you made a decision without knowing. You leapt into the dark.

**Mr. Dalton McGuinty:** When I made the decision to relocate both those plants, I did not have access to information which would lead me to understand how much, at the end of an extensive period of negotiation, this would cost. That is true. But I felt—

**Mr. Peter Tabuns:** So if you took on a risk that was unquantified—

**Mr. Dalton McGuinty:** But I know that I had the support of all three parties. But that was not the deciding factor in this. I just want to make that clear.

**Mr. Peter Tabuns:** Slow down for a minute.

**Mr. Dalton McGuinty:** That was not the deciding factor.

**Mr. Peter Tabuns:** You knew we opposed your plant. I made that clear the year before, and you hadn't listened to me. You hadn't listened to our party. We told you that these private power deals were extraordinarily risky, that you were going too far into gas and at some point you'd run into real problems. Well, you did. You got Ontario into trouble with this plant, without a doubt. And then, when you had political problems, you were willing to spend anything to get out of this.

**Mr. Dalton McGuinty:** We got 17 right when it comes to gas plants, more or less right.

**Mr. Peter Tabuns:** I would debate that.



**Mr. Dalton McGuinty:** I'm sure you would. But we got two, I think, very, very wrong. I know there have been some serious challenges associated with these relocations. The costs have been greater than anyone would have liked. We've learned a lot about the production of documents along the way, and we have struggled to deliver in a timely way. I think, to be fair to everybody, everybody acted in all honesty and forthrightness dealing with those kinds of things.

But I could not fathom the location of those gas plants of those sizes in those communities, and I thought the right thing for us to do—that was given expression to a number of times by a number of parties, by a number of candidates, a number of leaders, perhaps in different ways along the way, but there was a strong sense that my government had made a mistake in locating those plants in those particular locations.

**Mr. Peter Tabuns:** And you made us all pay for them.

**Mr. Dalton McGuinty:** And we had a responsibility—

**Mr. Peter Tabuns:** I'm going to turn my questions over to Mr. Natyshak.

**Mr. Dalton McGuinty:** And we have a responsibility to do them well.

**The Chair (Mr. Shafiq Qaadri):** Mr. Natyshak.

**Mr. Taras Natyshak:** Thank you, Mr. McGuinty. I appreciate your testimony here today before the justice committee. I also appreciate your opening statement. It's somewhat of a mea culpa and it is the first time in my time in this Legislature, in 18 months, that I've heard you say that you were wrong, that your government was wrong in siting the plants where they were, that your government was wrong in its lack of consultation with the community, that it was wrong in cancelling those plants without due diligence, without knowing even an estimate, even a ballpark figure of the costs, of what it was going to cost taxpayers in the province. You were also wrong in not listening to opposition members from the outset, when they had identified quite easily and quite clearly that the plants were sited in the wrong area.

I want to know if you think that proroguing the Legislature in the timeline that you did for the reasons that you did—as we were ultimately getting close to initiating committee hearings, we were trying to look into the numbers and the documents, trying to get documents related to the cancellation of the Oakville and Mississauga gas plants, you shut down this Legislature quite cynically. Do you think that was wrong to do?

**Mr. Dalton McGuinty:** I can't agree with everything you've said, but let me just—

**Mr. Taras Natyshak:** Just the last part. I want to know if you think the last part was wrong.

**Mr. Dalton McGuinty:** And I can't agree with that.

**Mr. Taras Natyshak:** Do you think it was right, then?

**Mr. Dalton McGuinty:** Yes.

**Mr. Taras Natyshak:** You do?

**Mr. Dalton McGuinty:** Yes. It was appropriate, in my judgment, and I say so on the basis of 23 years' ex-

perience as a legislator and bringing that perspective as to the level of rancour and dysfunction that characterized the Legislature.

**Mr. Taras Natyshak:** I disagree. I don't—

**Mr. Dalton McGuinty:** I understand that.

**Mr. Taras Natyshak:** Actually, I came to the Legislature with all good intentions and good faith to get down to the bottom of the issues that this province faced. You characterizing the opposition parties' need to get those questions answered as “rancour” and “dysfunction” is an affront to the democratic process in this Legislature.

**Mr. Dalton McGuinty:** It was—

**Mr. Taras Natyshak:** Now we are at a point—

**The Chair (Mr. Shafiq Qaadri):** Once again, I would invite you to allow the witness to answer, please.

**Mr. Taras Natyshak:** I'm going to move on to my second question. We're at a point now where we are starting to get answers because of the formation of this committee post-prorogation. We're getting some answers. As you had already stated earlier, we are now well versed in the circumstances. Yet you cancelled Mississauga without knowing the cost. You had just had a huge amount of risk and exposure in Oakville the year before. Had you learned anything from that process? Did you know that ultimately Mississauga was going to cost an enormous amount? And did you boldly go ahead with that regardless of the cost?

**Mr. Dalton McGuinty:** Just to return to the issue of prorogation, I knew that there would be an opportunity for all of us to cool down and enjoy whatever benefits might be had from a time out and an opportunity for this committee to resume, for these issues to be raised, for me to be here today and to appear before you. I think we've enjoyed some success in renewing better relationships inside the Legislature.

No, I did not know with any degree of certainty what the costs associated with relocating Mississauga might be. I did know that it would be a complicated issue. I knew that the best approach on our part would be to see if we might negotiate a new contract in a new location as opposed to simply paying out an existing 20-year contract in its entirety. I'm very pleased that we were able to enter into that kind of a negotiation and that we ended up with that kind of a result, which minimized some of the consequences—

**Mr. Taras Natyshak:** Thank you. All the meetings against the plant happened in the communities long before the cancellation. Why did you wait—

**Mr. Dalton McGuinty:** Mississauga you're talking about?

**Mr. Taras Natyshak:** In Mississauga, yes. Why did you wait until the last minute before the election before doing the right thing? If you now, with hindsight, realize that it would have been the right thing to listen to the community, why did you wait—

**Mr. Dalton McGuinty:** I should have done it sooner—

**Mr. Taras Natyshak:** You would have done it sooner?



**Mr. Dalton McGuinty:** I should have done it sooner.

**Mr. Taras Natyshak:** You should have listened to the opposition members who said—

*Interjection.*

**Mr. Taras Natyshak:** No, in hindsight, you should have listened to the opposition members who said, “Mr. McGuinty, Mr. Premier, you are making a massive mistake here. You are going”—

**Mr. Dalton McGuinty:** Let me—

**Mr. Taras Natyshak:** Here’s the question—

**Mr. Dalton McGuinty:** Can I answer this, because there are a number of questions here?

**Mr. Taras Natyshak:** Sure.

**Mr. Dalton McGuinty:** You’re right. I should have cancelled it sooner and, in fact, in June, I had publicly mused, you may not recall, but in June, I publicly mused—as reported in the Toronto Star, as I recall. I said it’s never too late to do the right thing.

I’ll tell you what I was struggling with. The fact was I was struggling with reconciling the decision I made with respect to Oakville and the proposed location of that plant and that Mississauga site. It was very difficult to distinguish the facts one from the other. Both were cases where residential communities were going to be made unwilling hosts to major gas plants in stressed airsheds near schools and hospitals and offices and homes.

**Mr. Taras Natyshak:** As Mr. Tabuns pointed out, the same scenario existed in northern York region, but your intervention didn’t apply in that region. Quite conveniently, that region was held by a Conservative member of Parliament.

You’re saying that we were right. We were right in counselling you to not build the plants in the first place.

**Mr. Dalton McGuinty:** Yes. We should have acted sooner.

**Mr. Taras Natyshak:** You, obviously, during the context of the election campaign, would have been monitoring all party leaders, all campaign promises throughout the campaign.

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**Mr. Dalton McGuinty:** I was fed information of that nature from time to time, yes.

**Mr. Taras Natyshak:** You’ve indicated that all parties agreed that you should cancel the gas plant.

**Mr. Dalton McGuinty:** That’s correct.

**Mr. Taras Natyshak:** You would have then seen at that point that our leader, Andrea Horwath, clearly stated that without knowing the full cost of cancelling the gas plants, she could not commit to arbitrarily cancelling gas plants. You are fully aware of that, I would assume.

**Mr. Dalton McGuinty:** No, I’m not.

**Mr. Taras Natyshak:** Why not?

**Mr. Dalton McGuinty:** Well, I don’t know.

**Mr. Taras Natyshak:** So you were monitoring party leaders, but you are being selective about what you want to apply to their campaign promises.

**Mr. Dalton McGuinty:** No. What I was aware of was that there was strong opposition to the location of the plant in Mississauga—

**Mr. Taras Natyshak:** Initially, from the outset.

**Mr. Dalton McGuinty:** —and that opposition could be found among all political stripes and among all candidates. You’re telling me that Ms. Horwath had a more nuanced position with respect to how this might—

**Mr. Taras Natyshak:** It wasn’t nuanced; it was quite clear.

**Mr. Dalton McGuinty:** Well, I’ll accept that; I understand that. She made her call; I made my call. My call was, it’s wrong to put that plant in that community.

**Mr. Taras Natyshak:** Your call was cancellation without any information. Your call was cancellation at all and any cost. Am I correct?

**Mr. Dalton McGuinty:** No.

**Mr. Taras Natyshak:** Well, you didn’t know.

**Mr. Dalton McGuinty:** I knew that it was not going to be “at all and any cost.” We were going to work as hard as we could—

**Mr. Taras Natyshak:** So there was a threshold. Was there a threshold that you weren’t prepared to cross?

**Mr. Dalton McGuinty:** We were going to work as hard as we could to minimize those costs.

**Mr. Taras Natyshak:** Had you identified a top-end margin for cancellation costs that you weren’t ready to cross?

**Mr. Dalton McGuinty:** We’ve spent a lot of time in this committee talking about those costs, but I think parents attach a pretty high price to the health and well-being of their children. I hear some mutterings and musings that that’s not easily quantifiable and not worthy, perhaps, of our consideration, but I think it’s important for all of us to take into account.

So, yes, there are costs associated with relocating these plants, and we’ve got to offset those against the right of families in those two communities and going forward—because this is bigger than just Oakville and Mississauga. Going forward, we’re now saying—I’m pleased with the announcement made by the Minister of Energy just yesterday—that we are not going to do this kind of thing; we’re not going to wrongly locate these kinds of plants in those communities, not in that way, shape or form, ever again.

**Mr. Taras Natyshak:** Mr. McGuinty, I agree that parents want the best for their children, but what parents want from their leadership is just that: leadership that has foresight, leadership that understands that governments shouldn’t put their communities in economic or environmental peril. Your lack of concern initially on the siting of those plants is a failure in leadership from the outset. It’s a failure in listening to the opposition members who quite clearly indicated that you were making a mistake. But you decided, your government decided, along with the ministries that were applicable, to boldly charge into the unknown, and it has cost us dearly.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Natyshak.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Good morning, Premier. Good to see you again.



**Mr. Dalton McGuinty:** Good morning. It's not "Premier."

**Mr. Bob Delaney:** I think if it's good enough for Mr. Fedeli, I can try one or two as well.

I want to ask you a few questions about some of the things that led to the decision to relocate the Oakville plant. Testimony before the committee has shown that there were some real issues with the siting of this plant. You've mentioned some of those issues as well. Frank Clegg of Oakville, from Citizens for Clean Air, testified that the plant would contribute to the existing air pollution in what you've already discussed as the overtaxed Clarkson airshed, and that there were no buffer zones to ensure the safety of residences, even though it would have been located only 400 metres from homes and a school.

I'd like you to elaborate a little bit on the concerns that you heard and how they contributed to the decision to relocate the Oakville plant.

**Mr. Dalton McGuinty:** Absolutely, if I could just back us up to the big picture for a moment. As you know, when we formed the government, we had a serious challenge relating to—you might call it an energy infrastructure deficit in Ontario, so we put in place a long-term plan. It extends over 20 years. It's amended on an ongoing basis. It will involve over \$100 billion in costs. We've been working hard to renew transmission and power generation.

One of the complexions we wanted to lend to our new plan was to make for cleaner and greener electricity in the province of Ontario. So we decided, and I believe rightly so, to eliminate coal-fired generation. We would have liked to have gotten that completed sooner, but nonetheless, we're making tremendous progress on that file. We introduced energy from renewables as well: the sun, the wind. We expanded hydroelectric capacity. We're refurbishing some of our nuclear plants and we're putting in place gas plants.

To come back to the specifics of your question, there was a need for us to put in place more generation, and the thinking was that we should put a plant in Oakville, because at the time, it would be needed there and in that way. I heard from Mayor Burton, I heard from Citizens for Clean Air, I heard from Kevin Flynn. These were ongoing concerns. As Premier, while you're juggling 100 balls at any one time, you try to reserve in your mind a space for things where you think, "We're not getting it right; something doesn't seem to fit." And that's how Oakville, when I began to consider that issue, struck me, and in fact it occurred to the newly appointed Minister of Energy. One of the first things that Brad Duguid—in one of our first meetings after I asked him to serve as Minister of Energy, he said, "Would you mind if I brought"—his words—"fresh eyes to this file, Oakville?" I said, "By all means." Minister Duguid took a look at it, and he came back with a recommendation, which I supported, and it was certainly in accord with my instincts. It was an admission, again, that we got that siting wrong. It wasn't in keeping with modern-day expectations, it wasn't in

keeping with the new legislative environment, where we couldn't even have located a single wind turbine there. So it became quickly apparent that we didn't get that right.

What became equally apparent, at least to me, was that getting out of this was going to be complicated and that there were going to be costs associated with that. But I'd much rather be here today talking to members of this committee rather than ducking the people of Oakville and Mississauga over the course of the next 20 years as we put in place gas plants that never should have gone in there.

**Mr. Bob Delaney:** We've also heard testimony that as the long-term energy plan was being updated in the summer and early fall of 2010, it became clear that a plant was no longer required for the Oakville area because demand had changed. It was also determined at around that time that a transmission solution was possible. Could you describe how those findings and that realization contributed to the eventual decision to relocate the Oakville plant?

**Mr. Dalton McGuinty:** Yes. One of the things that we do as part of our long-term energy plan is there is a legislated requirement that it be reviewed on a regular basis, because it's one thing for us to make projections today on the basis of information we have today about our needs tomorrow, but data and assumptions, those kinds of things, change over time.

It became apparent, according to the Ministry of Energy, working with the OPA, that the original plant dealing with Oakville and the plant to be located there in fact had additional flexibility that arose because of new circumstances—changes on the demand-and-supply equation. So that created a real opening for us to act and to do the right thing. Not only did it accord with my instincts, but it made it, from an electricity perspective, feasible for us to do the right thing.

**Mr. Bob Delaney:** Before the committee we've had expert testimony that the bylaws brought forward by Oakville would have been overturned in court. In fact, TransCanada Energy testified that they really would have stopped at nothing to fight the bylaws, and all three parties agreed that this plant was wrongly located. So I'm not entirely sure what Mr. Tabuns was representing when he talked earlier about the bylaws.

But we've also heard testimony from Mr. Clegg and from Mayor Burton that they had received commitments by both opposition parties that they would cancel the plants. At the time, were you aware of the opposition's position on the Oakville plant?

**Mr. Dalton McGuinty:** My sense was that there was a lot of—I mean, I didn't have specific wording as raised by a member of the committee here on the opposition side, but my sense was that there was tremendous concern raised by the opposition parties, but more importantly, the people living in the community. I think that if any of us wanted to do justice to this, we would all say that it would be inappropriate and wrong to locate plants of these sizes in those communities in those contexts, given



the stressed airsheds and the proximity to homes, hospitals and schools. I think we all knew in our heart of hearts that this would be the wrong thing to do.

0920

Yes, we can find some support in what the opposition said, and we can be motivated by what the people living in the communities said. But I think at the end of the day, it comes down to our personal judgment, and that's, to me, what leadership is all about.

Sometimes exercising leadership and doing what you think is the right thing is popular. Sometimes doing what you think is the right thing to do, like bringing the HST to Ontario, is unpopular. But the common thread that should be woven throughout those kinds of decisions is, are you doing what you honestly think is the right thing to do? Relocating those plants, to me, is the right thing to do.

Is it challenging politically for us to relocate those plants and be here today and deal with this committee? Absolutely. It's still the right thing to do.

**Mr. Bob Delaney:** Okay. I'd like to move to some of the meetings that were held with TransCanada Energy. We've heard that, in the lead-up to the October 2010 announcement that the Oakville plant would not go forward, members of your staff met with TransCanada Energy for discussions on the Oakville situation. Just in general, is it common for members of the Premier's staff to meet with stakeholders?

**Mr. Dalton McGuinty:** Very much so. In fact, they were charged with that responsibility, and I would repeat to them now my little story, some of the best political advice I got from my mother on my wedding day. That advice is, whatever happens, keep talking. I charged my staff with having open lines of communication, an ongoing dialogue. When people ask to speak to you, it's important that you create an opportunity to meet with them and to engage them. I can't see everybody; I'll see as many as I can. So it's their responsibility to meet with these folks.

**Mr. Bob Delaney:** So not just in this case, but Premier's staff met with other stakeholders on other matters on other occasions.

**Mr. Dalton McGuinty:** That's their job.

**Mr. Bob Delaney:** Okay. Sean Mullin and Jamison Steeve testified that they did not negotiate directly with the company and made no offers, but rather had exploratory discussions. Is that your understanding of what happened?

**Mr. Dalton McGuinty:** That's exactly my understanding. Some of the gentlemen here in opposition raised the issue, I believe, of the screening. Basically, the point I want to make is that, from time to time, there will be these kinds of informal conversations which can become a little bit more strained and possibly even become litigious. That doesn't mean we stop talking to people. Every once in a while, we may have to say, "We're going to pull back now because things are getting a little heated." Nonetheless, it's important that we can identify ways to reach out to these stakeholders and chat

with them. If it becomes necessary that we stop talking because of the risk of litigation, then we need to do that, too.

**Mr. Bob Delaney:** Earlier, Sean Mullin indicated that he wasn't authorized to engage in negotiations. I believe some of the words he used were, "We did not engage in any negotiation." Jamison Steeve called the meetings "exploratory" in nature. Members of the opposition have been critical of both of these members of your staff and have, in fact, cast aspersions on their reputations, so I'd like to ask you if you can comment on those two individuals and their contributions as public servants.

**Mr. Dalton McGuinty:** We are all blessed with incredible, hard-working, devoted staff who are inspired by the noble ideal of public service in all our offices. I couldn't be more proud of people like Mr. Steeve and Mr. Mullin and the contribution they made in my office. They worked as hard as they could and did their very best every day. These are young people of integrity and commitment, and I was proud to serve with them.

**Mr. Bob Delaney:** To the Oakville renegotiations then: All sides of this issue have said that the best path forward after the decision was made not to move ahead with the Oakville plant was to renegotiate an alternative site with TransCanada Energy. Many people have testified that this was the better path, as opposed to ripping up the original contract and paying damages without any new power being produced. In your view, why was it important to approach the negotiations in this way?

**Mr. Dalton McGuinty:** I think the combined value of the two contracts that were in place, calculated over the full 20-year terms, would be close to \$5 billion. Obviously, that would be an unacceptable cost. We thought from the outset that the best way for us to approach this in the greater public interest was to see if we might relocate the plants, enter into new agreements, repurpose much of the equipment, for example, from the original sites to the new sites and to keep the amount of money which we're paying for nothing, effectively, as low as possible. That was the best advice that we received from folks at the OPA and from within the ministry as well. I'm pleased that we've been able to land on that.

**Mr. Bob Delaney:** Throughout the hearings, we've heard a lot of witnesses be concerned about the ramifications of litigation between TransCanada Energy and the government. They've said throughout that the best efforts were made to avoid a lawsuit. I'm wondering if you could elaborate a little bit on the risks of litigation and what it would have meant for Ontarians if TransCanada Energy had undertaken legal action against the province.

**Mr. Dalton McGuinty:** I think we all understand that if this thing gets into the hands of the lawyers and the courts, the outcome becomes very difficult to predict. We wanted to keep as much control over the evolution of this file as we possibly could. We made a sincere effort from the outset to take this down a path which would lead towards negotiations and ultimate resolution which kept costs as low as we possibly could.

**Mr. Bob Delaney:** Moving to the Mississauga decision: a couple of questions about the decision to relocate



the Mississauga plant. There was obviously community opposition. In fact, the committee has heard from a number of leaders, including my constituent Mayor McCallion, that there were serious health and environmental risks for the Mississauga and Etobicoke areas. Some of the concerns you heard. Elaborate, please, on how they contributed to the decision to relocate the plant.

**Mr. Dalton McGuinty:** Of course, I heard from the inimitable Mayor McCallion. I had mused publicly, and deliberately so, in June 2011 that it's never too late to do the right thing. I was concerned about the plant.

For a long time, Mr. Delaney, I was under the impression that the plant was dormant and that there was a real possibility that it was not going to move ahead. I think that the contract had originally been let back in 2004. For much of my tenure as Premier, nothing seemed to be happening on that file.

Then it came to life and became very heated. I believe that after that June public comment that I made, the ministry and the OPA hosted a meeting. They didn't expect that many people to attend. In fact, many attended. The hall was overrun; the police were called. So I knew it was becoming a more urgent issue in the community.

Of course, the election brought it to a head. That was an opportunity for all the parties to weigh in, and I thought that it was appropriate in my capacity as leader of our party to make a commitment to relocate this plant.

**Mr. Bob Delaney:** The commitments that all three parties made, during the 2011 election campaign to relocate the plant have been described as political. I actually have a couple of NDP quotes on the Mississauga plant where Mr. Tabuns said on September 26, "We wouldn't build it," and I'm not sure if he ever indicated a cost to that. Etobicoke-Lakeshore NDP candidate Dionne Coley also pledged to fight the plant. That was reported by the Toronto Star. The National Post reported that local NDP candidate Anju Sikka had issued statements concurring with the then-new Liberal cancellation of the plant.

Premier Wynne explained to this committee what she felt that meant. She said, "There was advice that was given, there was siting expertise, but ... the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants."

Would you comment on that characterization, that energy experts are in fact responsible for siting plants, but that the role of elected officials is to listen to the communities and make sure that our local views are taken into account?

0930

**Mr. Dalton McGuinty:** I couldn't agree more with that statement. The fact of the matter is that if it were not for the politicians, of all political stripes, those plants would be going in there, and that would be wrong.

I know much has been made of the decision as being political. This is how representative democracy works. We have a special responsibility as elected representatives to listen to our constituents, to engage them and to

understand their concerns, and if we feel that they are legitimate, that they are authentic and that they are real, we've got a responsibility to act.

It's one thing for any of us to say in the context of a campaign that we would have done this. I've been criticized for not keeping promises; this is the first time I've been criticized for keeping a promise. We're doing what we said we would do, notwithstanding the complexities and political challenges associated with that. I'm pleased to be here before this committee today to talk about what we did and why we did it but, more than anything else, what I want to say is it's the right thing for us to do. It's bigger than just Oakville and it's bigger than just Mississauga.

What I hope we're saying collectively here, notwithstanding the challenges associated with the way we're executing this particular commitment—I hope what we're saying to all Ontario communities is that never again will we locate a gas plant in that way. I was so pleased to hear again that Minister Chiarelli announced yesterday that we're going to develop a meaningful process that allows us to site these things in a way that's respectful, in accordance with our modern expectations and our new legislative environment.

**Mr. Bob Delaney:** Last July, in 2012, when the Mississauga relocation arrangement was finalized, you said earlier that the cost was first announced at \$180 million, and then corrected to \$190 million. When he appeared before the committee last week, Colin Andersen testified that—and I'll use his words—"We did provide them with the numbers. That is what you would expect."

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** In your final comment, would you talk a little about the degree to which you relied on the OPA to provide accurate numbers?

**Mr. Dalton McGuinty:** Well, we relied very heavily. I didn't rely directly on the OPA; I relied more on the Ministry of Energy. I don't believe I ever used numbers that had not already been made public by the Ministry of Energy, whether that's the \$40 million or the \$180 million or the \$190 million, but I know that the Ministry of Energy, given their limited capacities and given the complexities of these kinds of calculations, relied heavily on the Ontario Power Authority.

Premier Wynne indicated her frustration; she received four or five different numbers for one gas plant alone from the Ontario Power Authority. I'm very pleased that the auditor is bringing his independent oversight to this and providing us with some estimates. He'll say himself that they are estimates, but at least we'll have something that we can all understand.

**Mr. Bob Delaney:** Thank you. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Chair, and thank you, Premier, for joining us this morning.

I think it should be pointed out that while you said that without the political work of all three parties, these plants



would have been built, there was only one political party that contracted to build these plants, and that was the Liberal Party.

**Mr. Dalton McGuinty:** I accept that.

**Mr. John Yakabuski:** Now, Premier, I first ran in 2003, and I remember during that campaign and through all my time here since then how you talked incessantly about children and air quality. Today you use that to try to change the narrative around these gas plants. All of those conditions that you talk about—childhood asthma, stressed airsheds—they all existed when the plant was first sited in Oakville, for example, in 2004-05. They existed. It took you until October 2010 to cancel the plant, when we were on the eve—within a year—of a provincial election, and it looked very much the case that Kevin Flynn, your member in Oakville, could be in serious trouble. So the plant was cancelled within a year of that election, and now you're citing that your decision was based on air quality, children, schools and proximity to those institutions. Yet the current Premier, Premier Wynne's, Dwight Duncan's while at committee last year at estimates, and your own story during the Mississauga cancellation was that these gas plants were cancelled for political reasons—the one in Mississauga on the eve of the 2011 election. So you're giving us a different story today, Premier, and quite frankly I think you've got at least \$585 million reasons to change the story today, because we know now that at a very minimum, based on the testimony of the OPA, these cancellations are going to cost at least \$585 million.

You said all along that you would not be swayed by NIMBYism when you proceeded with the long-term energy plan for Ontario. Scores of meetings took place between 2005 and 2010 in these communities, telling you exactly what you're using as your reasons today for cancelling them in Oakville, and subsequently in Mississauga; telling you that those plants should not be built there for those very reasons. Yet today, you say that that's the reason you cancelled the plants, even though the current leadership of your party and the government says they were cancelled for political reasons.

Who's giving us the straight goods on this one?

**Mr. Dalton McGuinty:** Well, I can only speak for myself, Mr. Yakabuski, and my personal motivations. I think we've made it clear throughout my administration how committed we were to the environment. I think we made some real progress bringing online clean energy, shutting down coal-fired generation, protecting green space here in the Toronto area and up in northern Ontario, dealing with everything from pesticides to endangered species protection—all those kinds of things. That's important to me.

All I can tell you is that my personal motivation in the matter of those two gas plants has been the health and well-being of people and families living in those communities. Others can engage in speculation and conjecture; I'm okay with that. But I'm here today to tell you what I know and what I feel.

**Mr. John Yakabuski:** Thank you. Well, it took you five years to come to that conclusion. Maybe you should

have talked to your mother somewhere in that period of time. You might have gotten to it a little sooner.

**Mr. Dalton McGuinty:** She's watching, John. Be careful.

**Mr. John Yakabuski:** Yes, I'm sure she is. Good morning, Mrs. McGuinty.

Is it not quite true, Premier, that in both these cases, you were presented with the polling, you were presented with the facts, you were presented with the research of your party that said, "We got it. Shut these things down"? My question to you—that is a question, but also, how many hundreds of millions of dollars would we have saved, from where we are today at a minimum of \$585 million, if you had actually made those decisions sooner not to go ahead with the Oakville plant and to cancel the Mississauga plant before it was at least a third or so built? If those decisions were made for your reasons, as you say—the altruistic reasons you cite; no pun intended with the word "cite"—if you used that reasoning and cancelled them earlier, how many hundreds of millions of dollars would we have saved the ratepayers and the taxpayers of Ontario?

**Mr. Dalton McGuinty:** I can't say. But I can say you make a good point in that the costs would have been lower had we acted sooner. And sometimes—

**Mr. John Yakabuski:** So you do know, then.

**Mr. Dalton McGuinty:** Sometimes, it takes us longer to do what we know we should be doing.

I always understood that getting out of Oakville and getting out of Mississauga was going to be complicated, that there were going to be real costs associated with that and that there were going to be political challenges created by that. I understood that.

**Mr. John Yakabuski:** You understand those things, though.

**Mr. Dalton McGuinty:** I understand that.

**Mr. John Yakabuski:** I appreciate your answer. Thank you. You understand those things, then. So if somebody would have come to you and said, "It's going to cost us—full, total cost—\$40 million to cancel this plant in Oakville," which, if you look at the contract that would have been in place, at 17,000, is about a \$6-billion deal over the 20-year term with the power costs and the stand-by costs and everything else. So it's a huge deal. And you're going to say that you accepted that \$40 million would be the total cost to cancel that plant? You were Premier for 10 years. You were leader for many years before that. You're a lawyer, you're an educated man, you're a smart man. You can't tell me that you believed those numbers, that \$40 million was going to be the total cost. You would have asked: "I need more information."

**Mr. Dalton McGuinty:** A couple of things: What we're talking about, of course, is not the cancellation of the contract, but rather the replacement of one contract with another and repurposing as much as we possibly could costs into the new agreement, and that there would be some outstanding costs for which we would be paying and have no value in return. So that puts the \$40 million, I think, in a slightly more reasoned context.



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The numbers that I use were the numbers that I was given by the Ministry of the Environment.

**Mr. John Yakabuski:** Okay. Thank you.

*Interjection.*

**Mr. Dalton McGuinty:** Sorry—the Ministry of Energy.

**Mr. John Yakabuski:** You've said on several occasions here that you took your information from the Ontario Power Authority; you based your numbers on the Ontario Power Authority's information. And your testimony—

**Mr. Dalton McGuinty:** The Ministry of Energy in turn relied on the OPA.

**Mr. John Yakabuski:** —and your statements in Hansard, to the media: This is \$40 million. That's it. Full stop.

Well, if you could go to document 2, Premier, and you have that paper in front of you, go to the last page, PC document 2. I'll just read a couple of—

**Mr. Dalton McGuinty:** I'm not sure I have, Mr. Chair, document 2.

**Mr. John Yakabuski:** It's the same one that the memorandum of understanding was on.

**Mr. Dalton McGuinty:** Okay, got it.

**Mr. John Yakabuski:** You know, that one that the cabinet knew that it would be more than \$40 million? That's the one. Same group of pages—and it's just on the back page.

So it says here, and this is part of the OPA presentation—Ontario Power Authority: "OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March 2011." Next point: "This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million." Next point: "On 29 April 2011, TCE rejected the government-instructed counter-proposal." And the last point: "TCE also served the government"—served the government—"with 60-day advance notice of its intent to sue the crown pursuant to section 7(1) of the Proceedings Against the Crown Act."

So the OPA is making it very clear that they were being instructed by the government. They would be instructed by you. You were the head of the government. The buck stops with you, Premier, and now the new Premier, she holds that office. The government was driving the bus. Why do you say that you were taking your information from the OPA?

And I'm going to ask you one last time, because we're going to be out of time: You knew this was more than \$40 million. You knew all along it was more than \$40 million. When did you know, when did your cabinet know, and why haven't we been given that answer?

**Mr. Dalton McGuinty:** I think I've answered that several times. The first time I found out about numbers that were different from the \$40 million or the \$190 million was when you found out about those.

The \$712-million number: I see here it says it had an "effective financial value," so I assume that they are

numbers that were brought together to total up to \$712 million. The first time I heard about that number was through testimony before this committee. I was not aware of that number having been—and the other thing that's kind of perplexing to me is, why are we talking about \$712 million—

**Mr. John Yakabuski:** This is very perplexing to us, too.

**Mr. Dalton McGuinty:** —when it's been settled for \$310 million?

**Mr. Victor Fedeli:** Oh, no, it has not.

**Mr. John Yakabuski:** It hasn't been settled. It hasn't been settled, but you're hoping.

**Mr. Dalton McGuinty:** Sorry, the cost estimated by the auditor was \$310 million.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski.

To the NDP: Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Mr. Natyshak.

**Mr. Taras Natyshak:** Did Ms. Wynne, as campaign vice-chair, ever ask about the costs of cancelling the gas plants as a campaign promise?

**Mr. Dalton McGuinty:** No.

**Mr. Taras Natyshak:** Did she ever ask about the costs of cancelling the gas plants, as a cabinet minister?

**Mr. Dalton McGuinty:** Not that I can recall.

**Mr. Taras Natyshak:** Did she ever ask about the costs of cancelling the gas plants, as leader-elect? And did you and your transition team ever brief her on what the costs related to the cancellations would be?

**Mr. Dalton McGuinty:** I don't know the answer to that.

**Mr. Taras Natyshak:** Did she ever ask, in any of her various capacities, why the numbers the government had were so different from the numbers that everyone else had?

**Mr. Dalton McGuinty:** I certainly could tell by her expressed frustration at her appearance before this committee that she had some real concerns. I never talked to her about that, but she certainly expressed she had some real concerns about the changing numbers that she was receiving from the Ontario Power Authority.

**Mr. Taras Natyshak:** So you didn't brief the Premier as a transition between your office—

**Mr. Dalton McGuinty:** It may very well have been that as a result of interactions between my staff and her new staff, there might have been discussion about that particular file, yes.

**Mr. Taras Natyshak:** But you, as an individual, did not sit down with Premier-elect Wynne?

**Mr. Dalton McGuinty:** No, I did not.

**Mr. Taras Natyshak:** Not on any file?

**Mr. Dalton McGuinty:** No. We had a general, as you might imagine, kind of a hand-off meeting; "Good luck," those kinds of things.

**Mr. Taras Natyshak:** How is it that—I mean, her testimony is similar to your testimony. In fact, it's almost identical. She has stuck for a very long time to the same figures that you have, to the same narrative—essentially,



to the same lines that you have. It would seem as though—

**Mr. Dalton McGuinty:** It could be that we're telling—

**Mr. Taras Natyshak:** Was she coached or is she just a quick study?

**Mr. Dalton McGuinty:** It could be that we're both relating the truth.

**Mr. Taras Natyshak:** Okay. Mr. McGuinty, Mr. Delaney characterized the costs of cancellation as akin to the moon landing: ostensibly, to boldly go where no government has gone before. Was there a cost that you, as Premier, weren't willing to pay in order to secure the support of the communities of Mississauga and Oakville? Was the sky the limit?

**Mr. Dalton McGuinty:** For me, it was about doing the right thing and it was about ensuring that we could make a statement, not only to these two communities but to all Ontario communities and all Ontario families, that we were not going to locate these kinds of gas plants in these kinds of ways ever again.

**Mr. Taras Natyshak:** If the right thing cost a billion dollars, would you have been prepared to do that?

**Mr. Dalton McGuinty:** I'm not going to engage in speculation when we already have some more reliable numbers before us. But what I can say was yes, I was absolutely committed to doing what I thought was the right thing in these circumstances, which was to relocate these gas plants.

**Mr. Taras Natyshak:** If they would have told you initially from the outset, "You're looking at upwards of a billion-dollar price tag," you would have said, "Let's forge ahead"?

**Mr. Dalton McGuinty:** I'm not going to engage in that kind of speculation.

**Mr. Taras Natyshak:** At the moment you made the decision, would you have liked to have had those figures, even if they would have been a billion dollars and upwards of a billion dollars? Would you have appreciated those figures while making the decision?

**Mr. Dalton McGuinty:** Yes, in an ideal world, but we don't live in that world; we live in this one—and of course, it was not possible to find out what a negotiated settlement was going to be at that time.

**Mr. Taras Natyshak:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you. Mr. McGuinty, when New Democrats filed a freedom-of-information request for documents about Project Vapour from your office, we were told that none existed. When the Ministry of Energy and the OPA released documents, there were pages and pages of documents from the Premier's office about Project Vapour. Why was your office covering this up?

**Mr. Dalton McGuinty:** I'll surprise you: I don't accept that characterization.

What I can say in terms of documentation is the following: Secretary Wallace phoned me recently and said, "The committee is looking for some cabinet documentation," and you may not know that at the very last

cabinet meeting at which I sat as Premier—one of the last things they do for an outgoing Premier is they give you authority, effective custody over cabinet documentation. That was developed during the course of your administration. He said, "The committee was looking for some of the cabinet documents." I said, "Well, give them whatever they're asking for." That was the end of that. So you're aware of my co-operation in this regard.

Ministries have a responsibility to abide by the law with respect to documentation and information. I can tell you again that in my office, for example, I did not have an office computer; I did not use a government email. My interaction overwhelmingly was verbal in nature with my staff. It was, I'd get on the phone, talk to my assistant, bring some people in, let's talk about this right now—

**Mr. Peter Tabuns:** I understand that, but I'm talking about your staff. When we appealed the freedom-of-information request, we were told that Jamison Steeve's email account had been deleted; so was Chris Morley's; so was Sean Mullin's—and somehow, it seemed to happen all around the same time that we were asking for documents. Why was your office destroying important information and, in fact, not following the laws of Ontario?

**Mr. Dalton McGuinty:** I have no reason to believe that my staff were not following the laws of Ontario. I have every expectation that they would comply with requests received from this committee and that they're doing everything they're supposed to do.

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**Mr. Peter Tabuns:** When we had Craig MacLennan in, who was chief of staff to the Minister of Energy, he reported that he deleted all his emails, which was contrary to the Archives and Recordkeeping Act. Your staff seemed to have deleted everything that they had. As we understand it, that's contrary to the law. Was there no one in your office who was ensuring that your staff were following the laws of Ontario?

**Mr. Dalton McGuinty:** My staff were fully expected to be both aware of the laws and to be following those laws. Again, I have no reason to believe that they did not do so.

**Mr. Peter Tabuns:** We will see, as that's investigated.

The signing off on documents: Do you think that it's appropriate, do you think that it's responsible, to sign off on documents without fully understanding their costs or their implications?

**Mr. Dalton McGuinty:** You're going to have to be a bit more specific.

**Mr. Peter Tabuns:** Do you think that signing off on arbitration agreements with TransCanada Enterprises, when the scale of risk was unknown, was a responsible thing to do?

**Mr. Dalton McGuinty:** We found ourselves in a difficult circumstance.

**Mr. Peter Tabuns:** That you had created.

**Mr. Dalton McGuinty:** That we had created, I accept that. Again, I still feel to this very day the right thing for



us to do was to deliver on that commitment, not just for the purposes of these families in those communities, but we're making a statement provincially that's we're not going to locate gas plants in that way ever again. In fact, I'd like to say that no party is ever going to locate gas plants in that way ever again.

So we found ourselves in a difficult circumstance: trying to negotiate, trying to use arbitration and to keep costs as low as we possibly could. It was challenging, as I think has become very apparent.

**Mr. Peter Tabuns:** Last question: As in Oakville and Mississauga, northern York region opposed the siting of the power plant. In that case, your cabinet passed regulations to ensure the plant went ahead—in a flood plain, might I add. The only difference was that this was a Conservative, not a Liberal riding. Why were you listening to people in Liberal ridings and not in opposition-held ridings?

**Mr. Dalton McGuinty:** Again, I just can't—I can't claim to be as familiar with that particular file as with the others. I don't recall it being the subject of as much profile as before—

**Mr. Peter Tabuns:** May I say to you that there were public meetings? The local mayors opposed it. You had full-scale upset in that whole region on this.

**Mr. Dalton McGuinty:** Okay. Well, it just wasn't as high an issue in my mind, maybe because it didn't achieve the media extent at that time, but I'd like to think that we're finally getting it right, and that, going forward, hopefully with the benefit of some support and assistance from this committee, we'll get some great advice about locating these kinds of plants in the future.

**Mr. Peter Tabuns:** Do you remember who suggested passing the regulations to move the York Energy Centre forward in northern York region?

**Mr. Dalton McGuinty:** No.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side, to Signor Del Duca.

**Mr. Steven Del Duca:** Thank you very much, Mr. Chair. Good morning, Premier. It's good to see you here this morning. Thank you for being here.

Before I get into some questions, I did want to provide a little bit of context because of some of the stuff that we've heard today from members opposite. In particular with respect to the York region example that Mr. Tabuns has been stressing today, I think it's important to make sure that people understand that there was a very different situation there. In fact, the OPA testified here at committee very clearly that the circumstances in that part were very different than in Oakville. Northern York region was either at the brink or they had passed the point of meeting reliability standards, so they were much more in need of a very immediate solution than the circumstances that existed in Oakville. I think it's very, very important to make sure that's understood clearly.

The other thing: In the final round of questioning from Mr. Yakabuski, there was a discussion around the \$712-million item that appears in an OPA deck. I think it's

extremely important to make sure folks understand that that \$712-million figure included the value of a new project, an alternative plant in the Kitchener-Waterloo area, and I think it's extremely important, given the sensitivities here today, that we have the context we need so that we can move forward with these kinds of things.

It's obvious; you've heard it a bit here today, and I know you've heard it in the weeks leading up to today—the opposition critiques regarding the costs associated with the relocations: I wonder if you find it a bit odd, considering the commitments that we heard from both the NDP and the PCs that they would cancel these plants—do you find it odd that they are this critical of how things unfolded with respect to costs?

**Mr. Dalton McGuinty:** I understand how it works. They've got a responsibility. They were vying for government at one particular point in time and they were making commitments that they would have presumably delivered on in government. I have no reason to doubt that.

Now we find ourselves in government and they find themselves in opposition. Our responsibility is to deliver on this commitment. Their job is to point out imperfections and failings on our part, and they've got to do that job. I accept that. I spent a long time, from 1990 to 2003, serving in opposition. It's an important job, so I can understand it.

I guess what I'm hopeful will emerge at the end of the day from this is a number of lessons. We've talked about those with respect to locating gas plants.

I think the other thing we didn't get a chance to talk about is document production—something we didn't talk about here today. There have been allegations and innuendo associated with the government perhaps not being as forthcoming. Those are without foundation. My sense is that everybody acted with integrity and worked as hard as they possibly could, whether in the OPA or the Ministry of Energy, to produce those documents in a timely way. The burden that was placed on them was massive and without precedent. I think it was the largest document production ever called upon to be made by the government of Ontario in its history, and there are challenges associated with that. Maybe we can draw some lessons from that when it comes to asking for documents again in the future.

I think we need to look at both siting of plants—that advice emerging from this committee would be helpful. We may want to give some thought to how we ask for documents again in the future so that we can get it right.

**Mr. Steven Del Duca:** Thanks for that.

You talked about the siting. One thing that seems to have been a bit lost in all of this is the positive impact on the communities where the plants will now be built. Can you recall the reaction from those communities with respect to what were those new sites when they were announced?

**Mr. Dalton McGuinty:** It was night and day in comparison to where they originally tried to be located. The sites are so much more suitable to the location of these



plants. I believe they both had pre-existing energy infrastructure there. They're much more removed from homes, schools, hospitals and those kinds of things. It's a great example of the right place. These are what they call willing host communities. They're eager for the jobs, eager for the long-term economic opportunities and feel that their airsheds, quality of life and health standards will not be compromised.

We can do these things the right way. It's just unfortunate that we didn't get it right the first time.

**Mr. Steven Del Duca:** Thank you. As you know, in May 2012, the estimates committee passed a motion by Mr. Leone asking for all correspondence within a specified time frame from the Ministry of Energy and the OPA related to Oakville and Mississauga. At the time the motion was passed, complex and sensitive negotiations were under way with both companies.

In your view, what would it have meant if the OPA and the province's negotiation position was prejudiced because the company had access to confidential and privileged information?

**Mr. Dalton McGuinty:** You know, if there's one common thread that has been universally supported by every person to whom you have put that question before this committee—they've all said the same thing: To release that kind of information would have compromised the negotiating position of the government and ultimately would have cost taxpayers more. It would have prejudiced the government's position.

I want to take the opportunity to commend once again Minister Bentley, who has acted at all times with integrity. He was caught between two competing principles. He was trying to honour both of those. He wanted to comply with the request put forward by the committee, a very legitimate request, and at the same time, he wanted to protect the interests of Ontario taxpayers. He struggled with that. As he said over and over again, the question is not whether or if he provides this documentation, it's when. I think that he did a fabulous job in that regard. He struggled with those two competing principles and ultimately he was able to provide the documentation.

**Mr. Steven Del Duca:** Thank you. I have a quote that I want to read to you. It's actually from a letter that you wrote to both opposition leaders in September 2012, the day after the Speaker's ruling that the three parties come to an agreement on the release of the documents, and in that letter you state, "I would like to express my disappointment over the insistence of Ontario's opposition parties to play politics with this sensitive issue." I'm wondering if you can expand on that just a little bit.

**Mr. Dalton McGuinty:** Well, you know, I don't want to become partisan. I know that that—this is too important an issue. I've tried to come here today and tell you about some of my inner motivations, about what I did and why I did it. I regret that we didn't move sooner. I knew it was wrong to locate those plants there. At the end of the day, I came to understand that in the most intimate way possible. I knew it was going to be difficult getting out of this, that there were going to be costs

associated with that and it was really difficult to get your arms around what those costs were going to be, but I knew that there was a fundamental underlying principle: We could not put those plants in those communities. To do that was the wrong thing. I think everybody sensed that. Everybody sensed that.

We earned the privilege of serving Ontarians as their government, so we've been called upon to deliver on this. That's what we are doing, and it has been challenging. Notwithstanding all those challenges, what would have been wrong would be for us to say to those people in those communities, "It's too difficult. The plants are going in and there's not a thing that we can do about it." I think we had to demonstrate that we have the conviction and the courage now to deliver on commitments which are hard to deliver on.

I think one of the upsides to this, notwithstanding the benefits that the communities there will enjoy, is that we will draw powerful lessons going forward, all of us, so that we will not be locating these plants in those kinds of communities ever again.

**Mr. Steven Del Duca:** Thank you. I think you know that part of this committee's job is to review the opposition's allegations about contempt against Mr. Bentley. I'm wondering if you could please share with this committee your views on these allegations.

**Mr. Dalton McGuinty:** Well, the contempt element, to my way of thinking, is exceedingly partisan—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Dalton McGuinty:** —and I talked about Minister Bentley struggling with two competing principles and how he found a way to resolve that and how he worked throughout with integrity and honesty.

My advice to the committee is to find a way beyond that and turn your minds to any advice that you might offer with respect to the cost issues, document production and locating plants in the future. I think those are very important issues that will serve all Ontarians well.

**Mr. Steven Del Duca:** Thank you very much, and thanks for being here today.

**Mr. Dalton McGuinty:** Thank you for inviting me.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca, and thank you, Mr. McGuinty, not only for accepting the committee's invitation, but for your continued representation of the people of Ottawa South, which you've done ably since 1990, the stewardship of your party for 16.5 years, as Premier of the province of Ontario for nine-plus years, and, if I might for a moment, on a personal level, for your personal grace and integrity. On behalf of this committee and on behalf of the people of Ontario, I thank you.

The committee is recessed.

*The committee recessed from 1004 to 1500.*

## ONTARIO POWER AUTHORITY

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting to order. As you know, justice policy is meeting about energy infrastructure. I'd invite our next



presenter to please come forward, Mr. Michael Lyle, general counsel and VP, legal, aboriginal and regulatory affairs, Ontario Power Authority.

Mr. Lyle, I invite you to be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Michael Lyle:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** I apologize that there's not as much press scrutiny as there was for this morning's presenter, but in any case I invite you to make your opening remarks for five minutes.

**Mr. Michael Lyle:** I assure you I'm not disappointed, Mr. Chair.

My name is Mike Lyle. I am vice-president and general counsel at the Ontario Power Authority. I am a member of the executive team and I am responsible for the legal, aboriginal and regulatory affairs division of the OPA.

Prior to joining the OPA as general counsel in 2005, I was counsel with the Ontario Energy Board. I've also worked as counsel in various government ministries, including the Ministry of Energy. I obtained my law degree in 1987 from the University of Toronto and was called to the bar in Ontario in 1989. Since that time, I have been a member of the Law Society of Upper Canada.

OPA's legal department is responsible for legal, regulatory and aboriginal affairs. Currently we consult and foster relationships with Ontario's aboriginal communities as it relates to energy planning. On the regulatory side we provide supporting evidence before the Ontario Energy Board on matters related to generation, transmission and distribution. We are also responsible for managing the legal aspects of the thousands of energy contracts the OPA has entered into across the province. In addition to contracts for electricity generation, which are at issue here, we have contracts related to conservation. Finally, our department addresses corporate governance and compliance issues. I am proud of the role the OPA and my team have played in the energy sector in Ontario.

As general counsel, I became involved in issues surrounding the Oakville and Mississauga gas plants around the dates of the announcements that these projects would not proceed. Thereafter, I was involved in the renegotiation and relocation of the contracts along with external counsel, members of our contract management team, government-appointed negotiators and our CEO.

I note that the Auditor General, in testifying before this committee on his report into the Mississauga power plant, acknowledged that the OPA attempted to get the best deal it could, but did not have the upper hand in negotiations.

We were also negotiating under tremendous pressure on Oakville. The OPA was motivated in negotiations on

the Oakville plant to get the best deal it could under difficult circumstances. In the end, a commercially reasonable deal was reached for the relocation of the Oakville plant to Napanee.

I was also responsible for responding to the disclosure request made by the estimates committee in May 2012, which occurred while we were in the process of re-negotiating both contracts.

As you have heard from Ms. Jenkins and others, the document disclosure request was unprecedented in terms of size and scope. Given the work that was being done on the relocation negotiations, the legal department was ultimately assisted by Ms. Jenkins and members of her team in responding to the motion. The documents requested by the committee were disclosed as a result.

I note that I am the first witness who was a practising lawyer at the time of the relocation negotiations to appear before the committee. As a lawyer, my professional obligations require me to maintain the privilege and confidences of my client, the OPA. As the committee is aware, in a letter from Colin Andersen, the OPA has waived the privilege for the purposes of my testimony at this committee, should the committee consider that necessary.

I would be happy now to answer any questions that you may have.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Lyle.

To the NDP: Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair, and thank you, Mr. Lyle, for being here this afternoon. Did you review the contract with Greenfield prior to the government's announcement that they would cancel the project?

**Mr. Michael Lyle:** I'm not entirely sure I follow the question, Mr. Tabuns. Do you mean immediately prior to the—

**Mr. Peter Tabuns:** Immediately prior to.

**Mr. Michael Lyle:** I don't recall specifically reviewing that contract immediately prior to the government's announcement.

**Mr. Peter Tabuns:** Did you review it after the government's announcement?

**Mr. Michael Lyle:** Yes.

**Mr. Peter Tabuns:** Did you know of anyone, prior to the government's announcement, assessing the complications that would attend cancelling that contract?

**Mr. Michael Lyle:** Not to my knowledge—I'm sorry; I should say I believe there were some discussions that went on in the summer prior to the cancellation. They were not discussions that I was particularly involved in, but there were discussions, I believe, with our electricity resources division around the fact that the plant was now being constructed and that there was community opposition.

**Mr. Peter Tabuns:** Okay. One of the elements that came out both in the emails and in the study by the Auditor General was the side deal on the Keele Valley landfill generation agreement with Greenfield. You were involved with that matter?



**Mr. Michael Lyle:** Yes, I was.

**Mr. Peter Tabuns:** And who instructed you in this matter?

**Mr. Michael Lyle:** It would have been Colin Andersen. I should add, though, Mr. Tabuns, that Mr. Andersen was in regular contact with senior government officials as those negotiations progressed.

**Mr. Peter Tabuns:** Okay. So you were in discussion with him, and he was in discussion potentially with the Minister of Energy and potentially with the Deputy Minister of Energy?

**Mr. Michael Lyle:** Potentially, I believe he also may have been having discussions with Cabinet Office and other senior government officials.

**Mr. Peter Tabuns:** Do you know who in Cabinet Office he would have been in discussion with?

**Mr. Michael Lyle:** Giles Gherson.

**Mr. Peter Tabuns:** Okay. "Other senior government officials": Can you be specific?

**Mr. Michael Lyle:** There was a regular meeting that was convened on sort of a weekly but as-necessary basis which would have had representatives—Mr. Gherson, Mr. Lindsay at the time, the Deputy Minister of Energy; there would have been a representative from Ontario Electricity Financial Corp. I'm trying to recollect. David Livingston as well would sometimes attend those meetings, or participate in those meetings; they were generally by teleconference.

**Mr. Peter Tabuns:** Okay. So in fact, quite a few people knew about the side deal with regard to Keele Valley.

**Mr. Michael Lyle:** I can't speak specifically to that. I would anticipate that that was the case.

**Mr. Peter Tabuns:** When did you learn that the Oakville gas plant would be cancelled?

**Mr. Michael Lyle:** I learned on Tuesday, October 5. As I was reviewing my notes, I noticed that I got the date wrong; I think I said Tuesday, October 4, but it's actually the 5th.

**Mr. Peter Tabuns:** Okay. Who told you?

**Mr. Michael Lyle:** Colin Andersen told me that he had heard from the government that they intended to announce the decision not to proceed with the Oakville facility on that Friday, which was the original scheduled date for the announcement, October 8.

**Mr. Peter Tabuns:** Okay. Didn't they announce it on October 7?

**Mr. Michael Lyle:** Yes, they did.

**Mr. Peter Tabuns:** Was there a reason they moved it up?

**Mr. Michael Lyle:** I don't know. We were informed, I believe on the 6th, that they were going to announce it the next day.

**Mr. Peter Tabuns:** In this case, prior to the cancellation, were you asked to assess the contract and look at costs and legal options that would allow the cancellation to proceed in a way with the least damage to the government and the people of Ontario?

**Mr. Michael Lyle:** No, to my knowledge, no. There was an opinion that was prepared, which I believe is in the disclosure that the committee has. It was from Aird and Berlis and discussed issues related to options and issues related to force majeure. There was a brief note that was prepared by a member of my staff; it was really only a one-page note. That would have been—

**Mr. Peter Tabuns:** Who was that person on your staff?

**Mr. Michael Lyle:** That would have been Susan Kennedy.

**Mr. Peter Tabuns:** Susan?

**Mr. Michael Lyle:** Kennedy.

**Mr. Peter Tabuns:** Can you outline just briefly what they touched on in that brief?

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**Mr. Michael Lyle:** I think they just explored the fact that there was no right to terminate the contract, that the proponent had all the necessary approvals and permits and was entitled to proceed, to continue constructing; I think it also indicated that the damages could be significant.

**Mr. Peter Tabuns:** Do you remember the range of damages that were identified at that time?

**Mr. Michael Lyle:** I think, as I recall, the discussion at that time was just—people had kind of put the upper limit on it, which was basically, if you were to pay out the entire revenue stream of the contract, what would that be? That was something in the range of about \$1.4 billion.

**Mr. Peter Tabuns:** One point four billion—

**Mr. Michael Lyle:** That obviously is very much on the high side because that's not profit; that's purely the revenue—

**Mr. Peter Tabuns:** The total revenue stream.

**Mr. Michael Lyle:** Yes.

**Mr. Peter Tabuns:** And what was the lowest estimate for the range?

**Mr. Michael Lyle:** I believe there's another document, which was not that document, where the number zero may have been discussed.

**Mr. Peter Tabuns:** Did anyone ever think it would be zero?

**Mr. Michael Lyle:** Well, it's difficult to assess.

**Mr. Peter Tabuns:** Okay. Did you have regular contact with the minister's office? There should be the document package in front of you: "I think we got that from the call with Craig." Did you keep the minister's chief of staff and others up to date on a regular basis?

**Mr. Michael Lyle:** I was not directly reporting on a regular basis to the minister's chief of staff.

**Mr. Peter Tabuns:** But did you have discussions with him on a regular basis, even if you weren't reporting?

**Mr. Michael Lyle:** I would not say on a regular basis. There's maybe one phone call that I had on Oakville prior to the decision not to move forward with Oakville, and I believe once the notice of proceedings against the crown was issued in late April 2011, I was involved in a

meeting that I believe Mr. MacLennan was in attendance at.

**Mr. Peter Tabuns:** All right. We're you involved in putting together the final memorandum of understanding?

**Mr. Michael Lyle:** Yes; I was involved in those negotiations.

**Mr. Peter Tabuns:** And were you aware, in the course of those negotiations, that there would be costs beyond the sunk costs of \$40 million?

**Mr. Michael Lyle:** Yes, I was.

**Mr. Peter Tabuns:** Do you believe the ministry knew there would be more costs than \$40 million?

**Mr. Michael Lyle:** There were ministry representatives at the table. Just to give you some context, essentially the negotiations went on pretty much non-stop through the 22nd and the 23rd. People didn't get much, if any, sleep that weekend. There were ministry representatives who were at the table as well as Infrastructure Ontario representatives.

**Mr. Peter Tabuns:** Can you name the ministry representatives or can you tell us how senior they were?

**Mr. Michael Lyle:** Yes. There was Michael Reid, who is an assistant deputy minister, and Halyna Perun, who is the legal director.

**Mr. Peter Tabuns:** So they would have been aware that, for instance, the gas management costs are costs that were assumed by the OPA in the course of the negotiation.

**Mr. Michael Lyle:** That would have been my understanding, yes. It's spelled out in the MOU.

**Mr. Peter Tabuns:** Right. And we feel the same way, that there are a lot of elements in the MOU that would have been visible to anyone who had worked on it and, frankly, it would have been brought to the attention of anyone who would have been briefed on it.

Did you have a sense at that point what the range was for the costs that were being assumed in this relocation?

**Mr. Michael Lyle:** That really wasn't my focus. We were really focused on the language, as the lawyers. First of all, of course, at that time we were really talking about the commercial deal, not talking about other costs such as the cost of transmission in Oakville or the cost of new replacement capacity for the fact that that plant would not come into service as early as originally thought.

In terms of the costs that relate to the actual deal, I believe there was a number around GD&M that I can't recall, but it was still a significant number, perhaps smaller than the number that's estimated today, but still a significant number.

**Mr. Peter Tabuns:** So, in fact, the team that was involved in the negotiations knew that the only cost that had been identified with clarity to that point was the sunk cost and that there were other, as it has been called, "buckets of costs" that were either to be finalized or yet to be developed.

**Mr. Michael Lyle:** Yes, I think that's a fair characterization.

**Mr. Peter Tabuns:** Okay. So anyone who would talk reasonably about this would say, "We have this identified clear cost and we know there are other costs that are coming and will be clarified."

**Mr. Michael Lyle:** Yes, that would have been my understanding.

**Mr. Peter Tabuns:** Okay. Were you acting under the direction of the government in negotiation of the memorandum of understanding?

**Mr. Michael Lyle:** There were three parties from the government side at the table and we were working together as a team: the ministry representatives, ourselves and Infrastructure Ontario. But ultimately, certainly the expectation was that the minister would be approving any ultimate deal.

**Mr. Peter Tabuns:** So who would you turn to for guidance when you had questions about the direction of the negotiations?

**Mr. Michael Lyle:** Certainly I would be reporting to my CEO, but my CEO was, I believe, in contact with the deputy minister on a regular basis.

**Mr. Peter Tabuns:** When the Oakville gas plant was cancelled, you wrote to Colin Andersen and Ben Chin that "The OPA acknowledges that the supplier is entitled to compensation from the OPA as a result of such termination...." Did anyone ask you what range of compensation we were talking about?

Document 3, here.

**Mr. Michael Lyle:** Oh, I'm sorry. Thank you.

So that was some work we were doing in response to a letter that we had received from, or a proposal we'd received from, TransCanada.

**Mr. Peter Tabuns:** Right.

**Mr. Michael Lyle:** And that's the evening of October 6. So just to give you some context for that, when Colin Andersen spoke to me about the government's decision not to move forward with the Oakville facility, he told me that the government was looking for a letter and TCE had requested a letter. We weren't really clear at that time what the nature of that letter was to be, and so we drafted up something that was more what we would call a standstill agreement, which essentially says everybody's obligations under the contract are on hold while we have some negotiations to see how we're going to come to a settlement on these issues.

Ultimately we sent that letter out, although that was after a prior letter had been received from TCE. Ben Chin and I then had a conversation on the evening of the 6th with I believe it was Chris Breen and John Cashin. At that time, they told us that our letter was insufficient, that they had been promised already that they were going to be kept whole, and that's what they were looking for.

**Mr. Peter Tabuns:** And who did they say gave them the promise that they were going to be kept whole?

**Mr. Michael Lyle:** In my recollection, it was the Premier's office.

**Mr. Peter Tabuns:** Any particular individual in the Premier's office?



**Mr. Michael Lyle:** I don't recall them specifically naming an individual in the Premier's office. There was a previous email that went out under Sean Mullin's name. Our first letter went out under Sean Mullin's name. That was the letter where it was essentially just a standstill agreement.

**Mr. Peter Tabuns:** Okay. In your email of October 6 to Colin Andersen, your first line is, "This is awkward and I would advise against it. I will call Ben." What do you mean?

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**Mr. Michael Lyle:** I don't have a specific recollection of this particular one, but I think probably I was referring to the clause in the second paragraph, which was my attempt at a draft and which may form all or part of the compensation. It was to some extent, I think, a drafting issue, but it was also this issue about—there was the thought, even at this stage, of the compensation being addressed through an alternative project.

**Mr. Peter Tabuns:** At this point, your understanding of the range of cost risk was still somewhere less than \$1.4 billion?

**Mr. Michael Lyle:** Yes. We had not done or been able to do any sort of significant analysis on that.

**Mr. Peter Tabuns:** So that was about the only figure that you had, the total value of the revenue stream.

**Mr. Michael Lyle:** Yes. I do think it's important, though—and maybe we can get to this at some stage—to understand the different numbers because that was an estimate of lost profit and, of course, in the final deal we did not ultimately pay lost profits.

**Mr. Peter Tabuns:** No, I understand that. But at the time you were negotiating this letter, you were aware, very roughly, of extraordinarily large costs that could be a risk for the province of Ontario coming out of this.

**Mr. Michael Lyle:** Yes.

**Mr. Peter Tabuns:** Okay. You wrote an email on September 22, 2011—I think it's number 4 in your package there—in which you write to Kristin Jenkins and JoAnne Butler, and you're talking about commentary to the media about the Oakville contract:

"Thinking about this some more, it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with 'Discussions are ongoing'." Is that because the government was engaged in negotiations?

**Mr. Michael Lyle:** That's because Infrastructure Ontario was leading the negotiations and we were playing a support role during that period of time.

**Mr. Peter Tabuns:** So this was September 2011. Why did you feel that it was necessary to be imprecise and not just say, "Infrastructure Ontario is involved in this?"

**Mr. Michael Lyle:** I don't recollect. I imagine Infrastructure Ontario wouldn't have been particularly happy about that. I don't think it was known at the time that they were involved in the negotiations.

**Mr. Peter Tabuns:** Why would they be unhappy? They were directed by the government to do this.

**Mr. Michael Lyle:** I'd only be speculating as to why they'd be unhappy, but—

**Mr. Peter Tabuns:** I apologize; I have to ask you to speak a bit more loudly.

**Mr. Michael Lyle:** I'm sorry. I'd only be speculating as to why they'd be unhappy, but the role that Infrastructure Ontario—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Michael Lyle:** —was playing in the negotiations was not something that was publicly known at the time, to my knowledge, anyway.

**Mr. Peter Tabuns:** It wasn't publicly known, but why were you being pressed to keep that out of the public eye?

**Mr. Michael Lyle:** I honestly don't know that I can say that we specifically were being pressed to keep it out of the public eye; it's just something that had not been discussed publicly.

**Mr. Peter Tabuns:** Infrastructure Ontario was involved. The Ontario Power Authority was involved. Was there any other body that was involved?

**Mr. Michael Lyle:** Ontario Power Generation would have played a role at one period of time. There was thought being given to an arrangement with TransCanada whereby there would be some form of a joint venture with OPG in developing—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side, Ms. Albanese.

**Mrs. Laura Albanese:** Thank you, Mr. Chair, and good afternoon, Mr. Lyle.

**Mr. Michael Lyle:** Good afternoon.

**Mrs. Laura Albanese:** Welcome to our committee.

I want to start by asking you about the negotiations to relocate both Oakville and Mississauga. Could you elaborate for a second on the OPA's mandate during these negotiations and if they would have been to ensure that a deal was made in the best interests of the rate-payers of Ontario, all other factors considered?

**Mr. Michael Lyle:** Certainly that's what we would be attempting to do.

**Mrs. Laura Albanese:** And did you want to elaborate further on the mandate?

**Mr. Michael Lyle:** As I say, we were in the circumstance of Greenfields where the government had made a decision to not move ahead with the Mississauga project and we had a difficult problem because they were already constructing and continuing to construct, and we did not have any mechanism to make them stop construction. We commenced negotiations with them with the goal of meeting the stated desire of the minister that the project not move ahead in Mississauga and to attempt to see if we could relocate the project to another site. Obviously we wanted to try to do that at the lowest cost we could under the circumstances.

**Mrs. Laura Albanese:** I understand that both contracts were ultimately renegotiated and not torn up, and I assume that the OPA decided to go this route because it



would have been much more expensive to just tear the contracts up and get tied up in the courts.

Former Deputy Minister David Lindsay testified at this committee a few weeks ago and he said that, "Paying costs and getting no electricity would not be a very good business decision." Would you agree with his comment?

**Mr. Michael Lyle:** I think, generally, I would agree. There's obviously a value in being able to use the equipment in a new location as opposed to it going at salvage value and having to pay damages related to that equipment, so there are some definite advantages in negotiating for a new project and relocating the projects.

**Mrs. Laura Albanese:** And when the OPA chose to renegotiate over tearing up the contracts, were you also concerned about maintaining good relationships with these energy suppliers?

**Mr. Michael Lyle:** Certainly it was always something of concern to the OPA that we treat our counterparts fairly and that people continue to have confidence in investing in generating facilities in Ontario.

**Mrs. Laura Albanese:** From what we've heard, I guess I can say that it was a difficult process overall, but the OPA balanced their responsibility to the ratepayers with their responsibility to provide reliable energy to the system. Would you say that's correct?

**Mr. Michael Lyle:** Certainly we recognized that there was value in continuing to have plants because there's still reliability issues and still a need for these plants in the midterm going out to the 2017-18 time period.

**Mrs. Laura Albanese:** Okay. I understand that in both cases these were very difficult and complex negotiations. In the case of the Mississauga plant, construction, you just mentioned, had already started and that added to the pressure to get a deal as soon as possible. When he testified before this committee, the Auditor General confirmed that the longer the delay to halt construction, the higher the sunk costs would be. He said, "basically, you'd be putting money into the ground," and for almost no reason. "Then you'd have to reimburse the supplier." Would you agree, therefore, that it was important to get a deal with Greenfield as soon as possible in order to minimize the sunk costs?

**Mr. Michael Lyle:** Yes, I would.

**Mrs. Laura Albanese:** And in terms of Oakville, we're all aware that there was strong local opposition and that the municipality had enacted bylaws to try and stop the construction of the plant. Chris Breen from TCE was here to testify a couple of weeks ago and he told the committee about all the channels that they would have used to deliver on their obligation to build the plant. He said that they were confident that they would eventually get the bylaws overruled, either at the OMB, the Ontario Superior Court, Divisional Court or whatever court they needed to go to.

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If TCE had successfully overturned the bylaws and building permits were issued, would the sunk costs have been higher if the government decided to cancel the plant after the construction had started?

**Mr. Michael Lyle:** I would imagine so. If, in fact, the government let the Oakville project go to the extent that they actually commenced construction, then yes, there would be additional sunk costs. If the government then decided to cancel the project, there would be liability for those sunk costs.

**Mrs. Laura Albanese:** In terms of the negotiations process with TCE, I would imagine that there were a number of offers back and forth. But as you said the goal was to renegotiate a new plant, not to write a cheque and walk away with no electrons produced, I guess we could say—I'd like to ask you about a specific offer that we've discussed a number of times here in the committee, and it was an offer from the OPA to TCE dated April 21, 2011, valued at \$712 million. When Chris Breen from TCE was here, he was asked about this offer, and he replied, "The offer that I'm aware of is Colin Andersen's letter to Alex Pourbaix proposing that we go ahead and build a peaking natural-gas-fired plant in the Kitchener-Waterloo area."

When we asked Mr. Andersen about that, he said, "We were talking about a number of different plants, in some cases, in different locations; in some cases, it was actually a package of plants or other things that could essentially get TransCanada equivalent value of one sort or another. In the end, a like-for-like project was what we were striving for."

My question to you is, this \$712-million offer wasn't just a blank cheque to the company. It would have included the value of a new power plant. Is that right?

**Mr. Michael Lyle:** I'm not sure that that's my understanding, and I confess I was not directly involved in negotiations during that time frame. I would have had information from being on the executive team and being at the board. It wasn't until the notice of proceedings against the crown came the next week that I got more directly involved.

The original idea was that a plant would be developed in Cambridge. It would be a smaller plant than the Oakville facility. The long-term energy plan had called for a plant in Cambridge. The intention was to incorporate the value of the lost profits into the price that would be paid under the contract for the Cambridge plant. What we ended up doing—and Mr. Andersen may be referring to a number of different time periods, because this changed over time. In April 2011, the focus was on a Cambridge plant. The focus later shifted. As I said, there were some potential joint ventures with OPG and ultimately a like-for-like plant, which we ended up with. As a result, because it's a 900-megawatt plant, just as it was in Oakville, there was no need to provide for lost profits in the payments under the contract.

**Mrs. Laura Albanese:** Cost estimates: I understand from Colin Andersen and JoAnne Butler's testimony before this committee that the cost estimates for both relocations are complex and difficult to calculate, would you say?

**Mr. Michael Lyle:** I'm certainly not the expert on the numbers, but I believe that's a fair statement.

**Mrs. Laura Albanese:** How long did the Auditor General work with your office on the Mississauga file?



**Mr. Michael Lyle:** I think they came along in September or early October, as I recall.

**Mrs. Laura Albanese:** Why would you say it took him and his office so long to come up with the calculations?

**Mr. Michael Lyle:** Well, a few reasons. Obviously, as the committee is well aware, there's a very detailed and complex record of documentation around this file. It is difficult, because of the different components, because of the different assumptions that go into a calculation, because so many of them are based on estimates—it is a difficult exercise.

**Mrs. Laura Albanese:** Now, in regard to Oakville, we know that the numbers have been changing, have been evolving, and in the past month we've heard here at the committee at least about four different numbers. Mr. Andersen provided us with the OPA's latest estimate last week, as well as an estimate from an independent report. The OPA produced a document on March 20 which estimated the cost for Oakville to be between \$33 million and \$136 million.

Would you agree that this really speaks to the complexity of calculating these numbers?

**Mr. Michael Lyle:** I think that's part of it. The numbers evolve as we get more information. There are a number of assumptions that are baked into calculating any of these numbers. Generally, they are estimates going forward and they don't just relate to the plant itself, but they also relate, as I've said before, with issues like line losses, with cost of transmission upgrade, with the cost of replacement power. There are a number of different components that go into the calculation.

**Mrs. Laura Albanese:** And they vary, from what we hear.

I want to turn for a moment to the document disclosure. As you're aware, there was a document disclosure motion that was passed at estimates committee in May 2012. Who oversaw the document search and disclosure process at the OPA?

**Mr. Michael Lyle:** As I indicated in my opening statement, I played the lead role during the earlier part of that back in May. At some point in time, as I became more embroiled and the negotiations with respect to the Oakville relocation heated up, Kristin Jenkins played the lead role.

**Mrs. Laura Albanese:** Now, as we know, the OPA had three separate document disclosures and your chair, Jim Hinds, said in a press conference following the third release of documents that mistakes had been made but the search was done in good faith. He said that the OPA is in the business of producing power, not documents.

What I take from that is that the document search process was quite a departure in terms of the normal activities engaged in by the OPA.

**Mr. Michael Lyle:** We had never experienced anything of that scope and scale. Obviously, we respond to freedom-of-information requests, but, as others have said, it was quite unprecedented for a committee request. We know, of course, that other entities have struggled

before with these large-scale document disclosures. It's a difficult thing to get right and, yes, we had some struggles.

We've put in place a new protocol. We have new software and we've used those tools in the search that we did with the Auditor General in their work on the Mississauga facility, and that went well.

**Mrs. Laura Albanese:** At that same press conference, when asked about opposition attacks that this was all a government cover-up, Mr. Hinds responded, "I don't think cover-up is the right way to describe it. We messed up some search terms, and we were trying to get them cleaned up. So I'm not sure what this has to do with the government. This is all us."

So would you agree with Mr. Hinds's statement that there was no orchestrated cover-up?

**Mr. Michael Lyle:** I certainly don't have any evidence to believe there was any sort of orchestrated such thing.

**Mrs. Laura Albanese:** Both Kristin Jenkins and Colin Andersen testified before this committee that the OPA was responsible for your own document search and had final sign-off on what was provided to the Clerk. Mr. Andersen told us, "When all was said and done, it was our decision." Would you agree with that?

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**Mr. Michael Lyle:** I would generally agree, but I would note that it was important to Mr. Andersen and to the ministry that we have a coordinated approach. I think ultimately all of the documents were disclosed to the committee to assist the committee with its work.

**Mrs. Laura Albanese:** And I understand that you, as legal counsel, would have provided some advice into what went in the final decision?

**Mr. Michael Lyle:** I'm sorry, when you're referring to the final decision, could you be more specific?

**Mrs. Laura Albanese:** To what documents would be handed to the Clerk from the OPA.

**Mr. Michael Lyle:** From May? I was involved in working on the search for May, working with my staff around the search. Subsequently, it came to light later in September and early October that there were other documents that we should have been searching, and at that time, we moved forward to do those searches and provide those documents.

**Mrs. Laura Albanese:** Okay. Well, thank you. I will pick up later. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. Good afternoon, Mr. Lyle. Thank you for being here.

**Mr. Michael Lyle:** My pleasure.

**Mr. Victor Fedeli:** I have a question for you on the actual cancellation, then. Who ordered the OPA to cancel the Oakville contract?

**Mr. Michael Lyle:** As I indicated in answering Mr. Tabuns's questions, I was told by my CEO, Colin Andersen, on October 5 that the government had decided it didn't wish to proceed with the Oakville project.



**Mr. Victor Fedeli:** So who told Colin Andersen?

**Mr. Michael Lyle:** I'm assuming it was the Premier's office because we subsequently would have had an interaction with Sean Mullin in the Premier's office, and as I indicated to Mr. Tabuns, Mr. Mullin was the email where the first proposed letter went out from.

**Mr. Victor Fedeli:** And who would have ordered the OPA to cancel the Mississauga gas plant contract?

**Mr. Michael Lyle:** Well, that was once again a decision by the government. As you know, it was a campaign promise, and then after the government took power, there was a discussion internally in the government as to how to move this forward. Then finally, there were a couple of letters from the Minister of Energy where he expressed the government's desire, expectation that the project not move forward in Mississauga.

**Mr. Victor Fedeli:** Mr. Lyle, under what legislation, regulation or statute did the government have the authority or power over you to tell you to cancel that contract?

**Mr. Michael Lyle:** Government did not have express authority under the Electricity Act. However, our board decided that in the circumstances, without government support for those two projects and in light of the community opposition, those projects would not be able to move forward.

**Mr. Victor Fedeli:** On our package of information, there's doc 5—whether you have it there. There's a letter from Halyna Perun to a long list of people that says, "We have advised Deputy Lindsay that the Minister of Energy does not have clear legal authority to direct the OPA to take any significant commercial steps in relation to the contract." She goes on to talk about the risks and that type of thing. This is from Halyna Perun of the legal services branch.

If they don't have any clear legal authority, why would your board proceed with cancelling a contract?

**Mr. Michael Lyle:** Well, as I indicated, the minister wrote two separate letters to our board—I believe the second one was November 14—and stated the government's clear policy decision that the project would not move forward in Mississauga.

**Mr. Victor Fedeli:** But they don't have any right or any ultimate power over your board. Am I correct in that?

**Mr. Michael Lyle:** That's true, but I think our board recognized that the government ultimately has the tool of legislation.

**Mr. Victor Fedeli:** So your board would have discussed this, Mr. Lyle?

**Mr. Michael Lyle:** I don't recall in what detail they discussed that. I think there was a recognition that, without government support for the project, the project would not be able to successfully move ahead.

**Mr. Victor Fedeli:** Do you sit on the board?

**Mr. Michael Lyle:** I attend board meetings. I don't sit on the board.

**Mr. Victor Fedeli:** Mr. Andersen told us there was debate at the board on this. It didn't sound like there was

all one-sided debate, either—that there was a discussion about it.

**Mr. Michael Lyle:** I don't actually recall.

**Mr. Victor Fedeli:** Would you undertake to turn over to us all of the board minutes related to any and all discussions with respect to the Oakville and Mississauga cancellations?

**Mr. Michael Lyle:** Can that be the subject of a motion?

**Mr. Victor Fedeli:** If you'd like it to be; if you insist, I can make it a subpoena.

**Mr. Michael Lyle:** There may be privileged information, and it would be of assistance if it was the subject of a motion.

**Mr. Victor Fedeli:** Then we will, at the end, Chair, make a motion. So if our staff will have that written out, we'll have that ready. If that's the direction you expect us to go, we can certainly accommodate you for that.

Why did the government cancel the Oakville power plant?

**Mr. Michael Lyle:** I don't have any other insight other than what one reads in the newspapers.

**Mr. Victor Fedeli:** In your letter to Mr. Ben Chin on October 6, you said, "In recognition of Ontario's ongoing need for power generation...." and you go on to talk about another project.

**Mr. Michael Lyle:** I'm sorry. Is this in your package?

**Mr. Victor Fedeli:** That's actually in the NDP package.

**Mr. Michael Lyle:** Oh, it is. Okay.

**Mr. Victor Fedeli:** I don't know what number it is in ours, but it's their fourth page. It was just easier to pull that one.

Let me read you the Toronto Star. It's not in the package; it's been here many, many times. This is former Minister Brad Duguid in his Toronto Star interview of October 7. He says: "Since then, changes in demand and supply ... have made it clear this proposed natural gas plant is no longer required." So he's telling the public one thing, that the power plant is no longer required because of supply and demand, that we don't need the power; yet on the day before, you wrote to Mr. Chin and said to him that there's an "ongoing need for power generation and your desire to generate power in Ontario" and you want to work. Which one is accurate? Was there a need for power or not?

**Mr. Michael Lyle:** Sorry. I'm still struggling to see the email that you're referring to.

**Mr. Victor Fedeli:** It's the fourth page from the NDP package.

**Mr. Michael Lyle:** Okay.

**Mr. Victor Fedeli:** It's to Ben Chin and Colin Andersen. It's the second-last paragraph. It begins with, "In recognition...."

**Mr. Michael Lyle:** Yes.

**Mr. Victor Fedeli:** So again, on October 7, then-Minister Duguid said, "Since then, changes in demand and supply ... have made it clear this proposed natural gas plant is no longer required." But you say to Mr. Chin from TransCanada the day before, "In recognition of



Ontario's ongoing need for power generation and your desire to generate power in Ontario ... " and you go on. Which one is true?

**Mr. Michael Lyle:** I think they're actually both true.

**Mr. Victor Fedeli:** You need the power, but you don't need the power?

1550

**Mr. Michael Lyle:** As I understand it, they're discussing two slightly different things. I'm not a power system planner, so I may get out of my depth here quite quickly. But essentially there was an overall Ontario system need for power and there's local reliability needs, and the original decision was to locate a plant in the southwest GTA to address both of those needs and, in doing so, be able to defer transmission investments. What had transpired was that there was no longer—the anticipated need in southwest GTA—

**Mr. Victor Fedeli:** It doesn't say that here. It just says, "In recognition of Ontario's ... need," and the other one says—

**Mr. Michael Lyle:** Yes. So as I say, this letter is talking—and it's reflected ultimately in the October 7 letter as well. But this letter is talking about Ontario's overall needs. I think the government's announcement was related to the fact that now a transmission solution was possible because the timelines had changed for local reliability needs.

**Mr. Victor Fedeli:** Yes. That's not quite what it says, but we'll move on to the \$712-million offer.

There are slides—I don't know if they're included in your package or not, but being part of the Ontario Power Authority, I'm sure you're quite familiar with the ones that say that OPA was instructed by the government to make a second counter-proposal—this government-instructed counter-proposal. On April 29, TCE rejected the government-instructed—who in the government instructed you to make a proposal and a counter-proposal?

**Mr. Michael Lyle:** I don't know. I was not involved in those discussions. I wasn't heavily involved in the negotiations at that particular time frame.

**Mr. Victor Fedeli:** In your opening statement, you said you became involved in Oakville and Mississauga around the dates of the announcement. "Thereafter, I was involved in the renegotiation and relocation of the contracts along with external counsel, members of our contract management team, government-appointed negotiators and our CEO." But you weren't involved in that one negotiation?

**Mr. Michael Lyle:** I was less involved from the period of October 8 on until the notice of the proceedings against the crown was issued against the government, which was April 27. So I would have had some knowledge, and there would have been discussions at our board about the counter-offer, but I wasn't so deeply involved in it that I would have known where that might have come from.

**Mr. Victor Fedeli:** So on another slide where it talks about the fact that—this is from the government, the Premier's office. It goes on to say that they're looking for a negotiated solution not to exceed \$1.2 billion and that

no cheque be issued to TransCanada. Are you familiar with those criteria as well?

**Mr. Michael Lyle:** I'm sorry, can you—

**Mr. Victor Fedeli:** It was in a slide, an Ontario Power Authority slide.

**Mr. Michael Lyle:** I wouldn't have detailed knowledge of that.

**Mr. Victor Fedeli:** In your opening sentence, again, you had said that you were involved in the renegotiation and relocation. As you were involved then, you would know what numbers the government was provided with? Can you tell us what the government knew and when they knew? Is that something you can tell us?

**Mr. Michael Lyle:** I can speak to, as I think I have spoken to, the \$40 million.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Michael Lyle:** I can speak to the \$40 million of sunk costs, which I have spoken to—

**Mr. Victor Fedeli:** So let me ask you specifically then about that, because I have asked the current Premier 21 times when she knew or when cabinet knew of that number. My colleague the member from Nepean—Carleton asked another 10 times—over 30 times in 30 minutes. We're trying to find out when. If they won't tell us when, can you tell us when the MOU was signed, who you negotiated with from the government, and when it was signed, specifically?

**Mr. Michael Lyle:** So, it was signed on September 24, and we negotiated with government representatives over the course of the weekend.

**Mr. Victor Fedeli:** Including?

**Mr. Michael Lyle:** As indicated, Michael Reid, who's an assistant deputy minister at the Ministry of Energy, and Halyna Perun, who's the legal director at the Ministry of Energy; as well, as indicated, there were representatives of Infrastructure Ontario.

**Mr. Victor Fedeli:** So they would have all been aware by September 24, or actually quite some time in advance of that, that we're not talking about \$40 million in sunk costs only; we're talking about buckets of costs?

**Mr. Michael Lyle:** The negotiations really heated up toward the end, so it may actually have been not necessarily some time in advance of that.

**Mr. Victor Fedeli:** But before September 24?

**Mr. Michael Lyle:** But by September 24.

**Mr. Victor Fedeli:** By September 24. The Mississauga settlement was announced in July 2012. The OPA had already spent more than \$245 million by that time. That's what the auditor had told us, that by the time the—I'm sorry, the \$245 million had been committed by the OPA by July 2012, even though the announcement wasn't for some months. Who in the government would have known of that \$245-million expenditure?

**Mr. Michael Lyle:** There would have been a number of people in government, I assume. The OPA did provide numbers to the government—

**Mr. Victor Fedeli:** Let me go back, then. Just to interrupt you for one second, you were aware that the auditor told us there was \$245 million spent by July 2012.



**Mr. Michael Lyle:** Yes, but I do think it's important to understand what each of those categories was about. There were gross costs, which related to all the payments that had been made to Greenfield South, its secured lender and its creditors, suppliers; and then there was a deduction made in order to get the net number, because there were costs that were going to be able to be used—sorry, there were categories of equipment etc. that could be reused at the Lambton site, and that's where the \$190-million number comes from.

**Mr. Victor Fedeli:** So there were costs of \$245 million agreed to by the OPA by July 2012, months before the announcement, and there would have been members of the government who were aware of that number.

**Mr. Michael Lyle:** As I say, they would have been aware of that number—well, I don't know if it was precisely that number they would have been aware of, but they would have been aware that there were costs that had been paid more than the \$190 million. However, it is also true—

**Mr. Victor Fedeli:** Let me just get that. You just finished saying they knew there were costs that were paid that were above \$190 million back in July.

**Mr. Michael Lyle:** That is true. But it is also true that they were seeking to report the net relocation costs, because those other elements could be reused at the Lambton facility.

**Mr. Victor Fedeli:** I completely understand.

We've only got about four more minutes. I want to ask you about this Colin Andersen doc 7. It's the Kristin Jenkins email to Colin Andersen, you and Ziyaad Mia. This is where she says that Jesse Kulendran instructed them to remove all of the SWGTA documents. She says, "Not only is it apparent from the Post-it notes that Jesse directed the OPA to exclude attachments where the correspondence itself was not responsive, it is also clear that Jesse directed us to exclude SWGTA. I have the documents and can show them to you."

Where do you weigh in on who's telling the truth, Mr. Lyle, about the Jesse Kulendran involvement in the Ministry of Energy instructing OPA to withhold documents on that first document dump? Where do you come in on this story?

**Mr. Michael Lyle:** I have not spoken to Ms. Kulendran about the matter. I don't know her very well. I have worked for several years with Ms. Jenkins and Mr. Mia, and I know them to be truthful.

**Mr. Victor Fedeli:** So when Kristin Jenkins tells you that she was instructed to remove documents, and we have sworn testimony—I don't have it in front of me; well, I do somewhere in my file here—that there were 4,000 to 6,000 documents removed in the first document dump, but replaced in the second document dump—are you familiar with what I'm talking about?

**Mr. Michael Lyle:** I'm familiar with what you're talking about, yes.

**Mr. Victor Fedeli:** Were you the one who told them, "Put those documents back in"? I believe somebody had a moment of consciousness and ordered those documents put back in. Would that be you, Mr. Lyle?

**Mr. Michael Lyle:** No. It was Mr. Andersen.

**Mr. Victor Fedeli:** Mr. Andersen ordered those documents that were withheld the first time to be put back in in a second document dump?

**Mr. Michael Lyle:** It became clear to us that there were other documents that should be given to the committee, and Mr. Andersen ordered that. That's where we end up with all of the documents going to the committee.

**Mr. Victor Fedeli:** But you acknowledge, then, that documents that the committee was entitled to were actually consciously withheld in the first document dump, but put in the second document dump.

**Mr. Michael Lyle:** No, I don't acknowledge that there was a conscious decision to withhold.

**Mr. Victor Fedeli:** Okay. How do you term that, then?

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**Mr. Michael Lyle:** From my understanding of the events, we had been told at the meeting on August 22 that this was the ministry's interpretation. This was a strict interpretation, but this was the ministry's interpretation.

**Mr. Victor Fedeli:** And then the ministry didn't follow that themselves, I understand?

**Mr. Michael Lyle:** And they did not, but Mr. Andersen, as I understand, did follow up with the deputy minister on several occasions and received assurance that the legal department in the ministry was in charge of things, that the approach that they were using had been run through their freedom-of-information people.

**Mr. Victor Fedeli:** Do you acknowledge there were documents withheld from the first batch that should have been in there?

**Mr. Michael Lyle:** I acknowledge that it would have been preferable in hindsight if all of those documents had been given on September 24, but ultimately they were.

**Mr. Victor Fedeli:** Thank you. How much time, Chair? Am I in the last seconds?

**The Chair (Mr. Shafiq Qaadri):** One minute, more or less.

**Mr. Victor Fedeli:** Oh, there is more than one minute?

I can't find my numbers handy. I apologize for that. But we are talking about documents in the thousands. Other than documents that said, "SWGTA," do you know which documents were actually withheld in the first batch?

**Mr. Michael Lyle:** I don't know specifically.

**Mr. Victor Fedeli:** Do you believe that Jesse Kulendran told Kristin Jenkins to withhold those documents—to exclude the documents entitled "SWGTA"?

**Mr. Michael Lyle:** I believe what Ms. Jenkins and Mr. Mia reported back to us is an accurate representation of what they were told.

**Mr. Victor Fedeli:** So you believe that Jesse Kulendran told them to exclude those documents?

**Mr. Michael Lyle:** I believe Jesse Kulendran would have—my understanding from Mr. Mia and Ms. Jenkins—told them that that was the approach that the ministry was taking and that that was their interpretation.



**Mr. Victor Fedeli:** Do you believe that's the right approach?

**Mr. Michael Lyle:** As I said, in retrospect, I think it would have been better if all of those documents had been disclosed.

**Mr. Victor Fedeli:** We'll pick that up—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Lyle, there was a provision in the contract with TransCanada Enterprises that protected the OPA from liability for lost profits. I think section 14—

**Mr. Michael Lyle:** Yes. Article 14.1, yes.

**Mr. Peter Tabuns:** Article 14. That section was effectively set aside in the course of these negotiations. I don't know if it was set aside in the initial letter or set aside later in the arbitration. But in any event, it was set aside. Why did the government direct you to abandon that part of the contract, which would have protected the OPA and Ontario against very substantial costs?

**Mr. Michael Lyle:** This goes back to the discussions that we had with the government in the October 5 through October 7 period. Ultimately, I don't know what motivated the government to insist that the letter be written so that it provided TCE with the financial value of the contract. The only thing I can tell you, Mr. Tabuns, is that I understood from Mr. Chin that he had communicated what TCE was saying about the commitment that they had received and that it was confirmed by the Premier's office that we should go ahead with the letter, as had been discussed with TCE, and that would have been on the morning of October 7.

**Mr. Peter Tabuns:** I'm assuming the Ontario Power Authority posed this position because it exposed us to great vulnerability, but the government continued to push back and say, "You have to give them what they want."

**Mr. Michael Lyle:** I think if you see the record of the email exchange that was in the Ministry of the Attorney General package that was provided to the committee, you will see there was a back-and-forth where we attempted to narrow what TCE was requesting, and we did succeed in part in narrowing what they were seeking to push for.

**Mr. Peter Tabuns:** They were pushing, but the government was pushing in their direction as well when it came to dealing with you; correct?

**Mr. Michael Lyle:** As I indicated, Ben Chin did check with the Premier's office because we had been told by TCE that they had been promised to be kept whole, and that's why they were putting the language in their drafts that they were putting in. Through Mr. Chin, I was advised that the Premier's office was comfortable with the letter in the form as discussed.

**Mr. Peter Tabuns:** Okay. In the document package from us, number 5, if you go a few pages in, you come across an Ontario Power Authority slide deck, "Winding Up of the Oakville Generating Station Contract: Board of Directors." The next page is "Status." What we have here is, "Meanwhile, TCE met with government to express concerns over our proposal and more threat of litigation.

"TCE's approach of 'divide and conquer' has worked as government is now integrally involved and being" heavily—well, heavily—"lobbied by GR rep from TransCanada."

Next point: "Government verbally directed us to send counter-proposal which puts us in a position of weakness, i.e. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal."

What's interesting to me is that I've listened to testimony from many people sitting in the seat you're in right now, from the government side, saying it was the OPA that was not being open with them about numbers; you knew the numbers. But, in fact, at every stage, what I see is the Ontario Power Authority trying to fight in the interest of ratepayers and being pushed back by the government. Were you constantly being pushed back and away from a posture in which you could protect ratepayers?

**Mr. Michael Lyle:** I think, during this time frame, we were bargaining hard at the table. It's certainly true that TCE went to the government and expressed their displeasure with us. I think there's some notes in the disclosure that talk to that as well.

**Mr. Peter Tabuns:** Yes, that's correct. There was consternation on the part of TCE that Colin Andersen was being too hard-nosed. Those aren't their words. "Stubborn" may be closer to the sense they were giving.

**Mr. Michael Lyle:** Yes, that's my recollection.

**Mr. Peter Tabuns:** Did this cause dismay at the OPA, that you were being undermined in your negotiations with TransCanada?

**Mr. Michael Lyle:** I don't think we were terribly happy.

**Mr. Peter Tabuns:** Okay. In terms of Oakville, what was your assessment of the prospects for having that plant actually built and operated, given the interim control bylaw and the air quality bylaw that had been put in place by the municipality of Oakville?

**Mr. Michael Lyle:** That's a hard one to judge. I don't know of a specific assessment as to the probability of it being successful.

**Mr. Peter Tabuns:** Sorry. I'm not clear in your answer. You haven't seen an assessment as to whether or not TransCanada would be successful in building, or an assessment as to whether or not Oakville would have been successful in blocking the plant?

**Mr. Michael Lyle:** I think they're two sides of the same coin, but I'm not aware of any such analysis that we had done.

**Mr. Peter Tabuns:** That the OPA had done?

**Mr. Michael Lyle:** Yes.

**Mr. Peter Tabuns:** All right. In October 2010, you had an email exchange with JoAnne Butler regarding negotiations with Mitsubishi saying you needed to wait for instructions from the government. What kind of instructions was the government providing with regard to Mitsubishi at this time, and how were they doing it?

**Mr. Michael Lyle:** Sorry. Is that in your package?



**Mr. Peter Tabuns:** No, it is not.

**Mr. Michael Lyle:** Sorry. This is an email exchange involving me?

**Mr. Peter Tabuns:** You and JoAnne Butler in October 2010 regarding negotiations with Mitsubishi, the turbine provider.

**Mr. Michael Lyle:** I may be getting the wrong period. There were discussions with Mitsubishi because, if the plant project was going to be developed in Cambridge, it was going to be a different type of plant, so the turbines would need to be modified and there would need to be discussions with Mitsubishi, the turbine supplier, around making modifications to the turbines.

**Mr. Peter Tabuns:** So nothing really interesting or—tangential.

**Mr. Michael Lyle:** Without seeing the email, it's difficult for me to get a better sense of the context.

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**Mr. Peter Tabuns:** Okay. Were you involved in the drafting of Colin Andersen's letters in response to any of the matters regarding this cancellation?

**Mr. Michael Lyle:** Any of the matters—you're talking about letters to the committee?

**Mr. Peter Tabuns:** Letters between Colin Andersen and the government, letters about document provision.

**Mr. Michael Lyle:** Quite possibly. There may be many I was involved in. Without giving me a specific instance, I wouldn't know whether I was involved or not—

**Mr. Peter Tabuns:** Was there any point at which you would draft a letter for Mr. Andersen about the role of Jesse Kulendran in document preparation?

**Mr. Michael Lyle:** No, I did not.

**Mr. Peter Tabuns:** Okay. Did you speak with Kristin Jenkins at any time about Jesse Kulendran and the documents matter?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Michael Lyle:** Yes, I would have from time to time.

**Mr. Peter Tabuns:** And did you have a sense that the OPA was being steered down a blind alley on its document preparation?

**Mr. Michael Lyle:** I wasn't heavily involved, as I indicated, in the documents aspect of things. I did have some concern at the August 22 meeting about the ministry's involvement that had been described to us.

**Mr. Peter Tabuns:** And what was your concern?

**Mr. Michael Lyle:** My concern was their interference, essentially.

**Mr. Peter Tabuns:** The interference in particular telling you that the southwest GTA documents shouldn't be included and taking a very narrow interpretation of whether an email did or did not qualify—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Ms. Albanese?

**Mrs. Laura Albanese:** Thank you, Mr. Chair. I would like to start with a clarification with regard to some comments that MPP Fedeli made with regard to the Mississauga costs, because I think it's important to remind the

committee that Mr. Andersen testified here and said, "We did provide them"—meaning the government—"with the numbers. That is what you would expect." In an email that we have tabled with this committee a number of times, Mr. Andersen confirms to the ministry that the sunk cost for Mississauga was \$180 million, which then changed to \$190 million a few days later.

Back to you, Mr. Lyle.

**Mr. Michael Lyle:** I think that's consistent with my testimony.

**Mrs. Laura Albanese:** I wanted to ask you a couple of questions with regard to the commercial sensitivity of the documents that were disclosed to the estimates committee. I'm talking to the motion that was passed in May 2012. At the time those requests were made, you were obviously aware that pretty sensitive commercial negotiations were ongoing with Eastern Power and Trans-Canada?

**Mr. Michael Lyle:** Yes.

**Mrs. Laura Albanese:** Mr. Andersen wrote to this committee on May 30 in response to that motion, and he said that while "the OPA respects the authority of the committee and its interest in receiving this information," there were also serious concerns about the release of documents before the negotiations were finalized.

The letter states, "The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without prejudice negotiations. Such disclosure is likely to significantly prejudice the position of the OPA and the province in the ongoing highly commercially sensitive negotiations and in the current litigation."

Is it fair to say that, potentially, releasing documents to the public at that point in time may have increased the costs to Ontarians and the OPA, and that the Minister of Energy had a responsibility to protect ratepayers while also being open and transparent?

**Mr. Michael Lyle:** I'm not the person to comment on the Ministry of Energy's responsibilities, but—

**Mrs. Laura Albanese:** And as part of the OPA?

**Mr. Michael Lyle:** I would say there was a significant concern, and I think it has also been discussed by a number of other witnesses, including the Auditor General, who talked about showing your cards at the poker table. There was a significant concern that it would undermine our negotiations and undermine the ongoing litigation as well.

There's also a concern about solicitor-client-privilege documents as well. That's an area of sensitivity for a lawyer, because that's an important legal principle. And I think there's an ongoing concern that parties who are dealing with the Ontario government or its agencies have some comfort that when they're having confidential, commercially sensitive negotiations with those governmental entities, their documents will be kept confidential.

**Mrs. Laura Albanese:** More recently, on March 18 of this year, Mr. Andersen wrote to this committee with respect to further document disclosure, and he raised the



issue of material that was privileged and confidential and his concern for the public interest. Specifically, he wrote that “if privileged and confidential information is disclosed publicly, Ontario will face difficulties in its dealings with investors and counterparties, current and future, who will not be willing to participate in competitive tenders if there is a risk that proprietary information will be released publicly in a committee process.”

Could you expand on these concerns and explain to us why they’re so significant in your particular industry?

**Mr. Michael Lyle:** As I already mentioned, it is an area of concern because parties who are participating in the energy sector and other sectors and who are dealing with governmental entities may be less likely to participate in Ontario’s market if they have the concern that their commercially sensitive information, which would undermine their competitive position potentially in other markets, would be publicly disclosed in Ontario.

**Mrs. Laura Albanese:** Thank you for that. I will now pass it on to my colleague, MPP Delaney, if that’s okay.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair.

I think it’s important that we repeat some testimony made earlier about the August 22 meeting between the ministry and the Ontario Power Authority. The witness in question, Jesse Kulendran, testified here under oath, and she told us, “I do not have the authority to direct the OPA to exclude documents,” and she said, “I did not direct the OPA to withhold documents.” The Deputy Minister of Energy defended her and said to the committee, “I have no reason not to believe what Jesse has said.” As well, Colin Andersen and Kristin Jenkins have both testified that the OPA was responsible for its own search and for what was disclosed to the committee.

Just this final question, sir: Does that fit with your recollection?

**Mr. Michael Lyle:** I agree with Mr. Andersen and Ms. Jenkins’s testimony in that regard. I think there’s a recognition that—

**Mr. Bob Delaney:** Thank you. I think we’re done, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side—

**Mr. John Yakabuski:** Excuse me, Chair. Can he not finishing answering the question if he wants?

**The Chair (Mr. Shafiq Qaadri):** I believe he’s capable of doing it, but it will be on your time, Mr. Yakabuski.

Mr. Fedeli.

**Mr. Victor Fedeli:** I’ll ask the witness to complete the sentence before I turn it over to Mr. Leone.

**Mr. Michael Lyle:** It may have gone out of my head, Mr. Fedeli. I’m sorry; it has. Perhaps we can come back to it if I can recollect.

**Mr. Rob Leone:** Sir, thanks for attending today.

Earlier in your testimony today, you talked about how you believed that Kristin Jenkins’s testimony with respect to Jesse Kulendran was accurate, that you felt that she essentially suggested that Jesse Kulendran directed

the OPA to withdraw documents. Was that not your testimony?

**Mr. Michael Lyle:** Yes, it was—well, to frame it. She instructed the OPA that this was the approach that the ministry was taking; that the ministry saw this as a narrow interpretation of the motion.

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**Mr. Rob Leone:** And the OPA, at that time, considered that to be the direction of the ministry?

**Mr. Michael Lyle:** As I understand it, after that, Mr. Andersen had several conversations with Mr. Imbrogno on this subject, and received assurance from those conversations—ultimately it appears it was a miscommunication, but received assurance from those communications that the approach that the ministry was taking had been endorsed through the freedom-of-information people, that the legal branch had the lead responsibility on documents, and that Mr. Imbrogno was comfortable that the correct approach was being taken.

**Mr. Rob Leone:** Subsequent to that, the Ministry of Energy didn’t even follow through with what they had told the OPA. That’s the chronology, essentially.

**Mr. Michael Lyle:** Well, and I think that’s where it appears there might have been some confusion or some broken telephone. I can’t obviously speculate on who spoke to Ms. Kulendran, but it appears that the ministry was not taking that approach. So I’m not sure how it ended up that Ms. Kulendran gave those instructions to the OPA.

**Mr. Rob Leone:** This whole episode tarnishes the reputation of the Ontario Power Authority to some degree, where now they are in a position of not releasing documents and withholding documents, under the presumption that this was the ministry’s direction. What’s the Ontario Power Authority’s reaction to that kind of scenario?

**Mr. Michael Lyle:** As I said, I think, in hindsight, it’s regrettable that not all of the documents that ultimately were provided to the committee were given to the committee on September 24. The OPA, through further due diligence, identified that there were further documents, and disclosed those documents. Now the committee has all of the documents that it needs and has asked for in order to do its work.

**Mr. Rob Leone:** Did the OPA board discuss document disclosure and this lapse between what happened within conversations that occurred between Ms. Kulendran, the Ministry of Energy and the Ontario Power Authority? Were there any conversations that the board had with respect to this? This obviously affects the reputation of the Ontario Power Authority.

**Mr. Michael Lyle:** The OPA board has had conversations related to document disclosure and related to what we would do in order to do it better going forward in the future.

**Mr. Rob Leone:** And what were the conclusions of those discussions?

**Mr. Michael Lyle:** I believe there was a letter that was forwarded to the committee. There was a motion



with respect to whether the OPA had undertaken an investigation of Jesse Kulendran's activities, and the answer to that was no. However, the OPA had undertaken a review, and that review was undertaken by our external council and that was provided to the committee in a sealed envelope.

**Mr. Rob Leone:** Would you care to table any of the minutes associated with the documents disclosure discussions that occurred at the OPA board level?

**Mr. Michael Lyle:** Many of these discussions happened in camera so I actually don't know to what extent there are minutes in that regard. But if the motion is brought then we would comply with the motion.

**Mr. Rob Leone:** Okay, well we're going to bring forward a motion. I think Mr. Fedeli has prepared one that will hopefully shed some light on this for us.

I want to move to this whole notion of who actually is driving the bus with respect to decisions of energy policy in the province of Ontario. When we talk to the government—you know, everything that's good about energy policy, it's the government that's putting it forward and when there's something that has gone terribly wrong they basically say it's the OPA's fault, and you get thrown under the bus.

I've heard testimony from OPA officials where they have stated quite frankly that they have been providing the government with numbers associated with costs, and, at the end of the day, the government chose to ignore those numbers. I think the famous \$40-million figure of Oakville has been largely discredited by almost every witness that is not associated with the caucus or the cabinet of Dalton McGuinty or Kathleen Wynne. Even the bureaucrats in the Ministry of Energy have suggested that everybody knew exactly the costs that are associated with this.

This, I think, speaks to the overall credibility of the Ontario Power Authority. You have consistently been thrown under the bus with respect to bad decisions with respect to energy policy, whether it's the siting of gas plants, whether it's not being forthright with cancellation costs, even though you have been. How does the OPA react to these kinds of suggestions from the government?

**Mr. Michael Lyle:** I don't agree with the characterization that you make in your question.

**Mr. Rob Leone:** But this has come from testimony, sir. I'm not suggesting anything that we've—I might have reframed it a little, but this is exactly what we've heard in this committee. Whether it's the OPA testifying, or the Ministry of Energy people, whether it's government staffers, whether it's people who were supposed to be negotiating for the government who actually weren't because they got screened out and so on and so forth, this is exactly what we've heard in this committee.

**Mr. Michael Lyle:** There's no doubt that the OPA is a challenging place to work. There are many competing pressures on the work that we do. There's no doubt that there is ongoing and expansive communication between the OPA and the Ministry of Energy.

**Mr. Rob Leone:** Were you involved with the memorandum of understanding with respect to the cancellation of the plants—Oakville?

**Mr. Michael Lyle:** The September 24 MOU, yes.

**Mr. Rob Leone:** Who was provided with the information regarding the additional costs associated with that MOU?

**Mr. Michael Lyle:** As I say, there were ministry representatives at the negotiating table. I don't know who was briefed within government after that. I believe the minister was briefed on the morning of the 24th by Mr. Andersen.

**Mr. Rob Leone:** So you agree with the assertions by folks from the OPA we've had testifying at this committee that the government was fully aware that there were additional costs, more than what they had been telling the people of Ontario?

**Mr. Michael Lyle:** Certainly there were a number of representatives of the government who would have been aware that there are other categories of costs over and above the \$40-million sunk costs.

**Mr. Rob Leone:** Everyone?

**Mr. Michael Lyle:** I can't really speak to that. I don't know who was briefed within government.

**Mr. Rob Leone:** Colin Andersen said everyone knew.

**Mr. Michael Lyle:** He did, and I think what he meant was people who were in the loop within government and who were involved in this issue. I'm not sure how far that goes within government.

**The Acting Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Rob Leone:** I'll take that as everyone.

My final question, sir—Hazel McCallion made mention that when she talked to Dwight Duncan about cancelling the Mississauga gas plant, he told her that there was no possibility that he could have done that in 2005 or anytime after that, yet just at the eve of an election the government made a decision and the OPA followed through. As you say, the board talked about it, they were written a letter and they agreed that they couldn't proceed with the project without the government's backing. Would the same thing have happened in 2005-06, at any earlier stage? Would the OPA have reacted the same way, avoiding most of the costs associated with cancellation?

**Mr. Michael Lyle:** I can't speculate on how our board would have reacted at that time.

**Mr. Rob Leone:** But they did react in the way that I've suggested, which is, they would follow the government's direction at the end of the day.

**Mr. Michael Lyle:** Ultimately, you're correct; they decided that without government support for the project, it could not move ahead.

**Mr. Rob Leone:** All right. That's basically what—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone, and thanks to you, Mr. Lyle, for your presentation. You are officially dismissed. Thank you for coming to the committee.

**Mr. Michael Lyle:** Thank you, Mr. Chair.



**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli has furnished the committee with a cascade of motions. I invite you to begin presenting them, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you. While Mr. Lyle is here, let me read you the first motion that affects them most. This is the one involving the Ontario Power Authority, if I can find that one.

I move that the Standing Committee on Justice Policy requests the following documents from the Ontario Power Authority within two calendar weeks of the motion passing: all minutes, electronic or otherwise, taken at meetings of the Ontario Power Authority's board of directors between January 1, 2010, and May 7, 2013, related to the cancellation and relocation of the power plants in Oakville and Mississauga, including, but not limited to documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana, Project Fruit Salad, and that the documents be provided in a searchable, electronic PDF.

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**The Chair (Mr. Shafiq Qaadri):** Thank you. The motion is in order and is before the committee. Mr. Delaney?

**Mr. Bob Delaney:** Chair, we have no trouble with the request for the documents. We would like to ask Mr. Fedeli, however—in the last sentence he says, “that the documents be provided” to committee “in a searchable, electronic PDF.” In the event that this involves the scanning of a paper document—if you’ve ever done it, it can be a little time-consuming. Would you like to put in some sort of language that in the event that this involves a large volume of documents, you can have it in progressive slices, you can have best efforts—whatever—such that if this involves manual labour to convert paper documents to a searchable electronic document, we can accommodate people who are clearly going to do their best to comply with the motion? We have no trouble with the content of the motion.

**Mr. Victor Fedeli:** Thank you, Chair. I think the fact that these are their board minutes, we can reasonably assume that there is not a large volume here, according to the testimony of both Mr. Andersen and Mr. Lyle. I would think that in this particular case—while I do understand that—this motion will stand the way it is.

**The Chair (Mr. Shafiq Qaadri):** I take that as a polite “no,” Mr. Fedeli? Mr. Leone?

**Mr. Victor Fedeli:** In this particular case.

**Mr. Rob Leone:** I do believe that every time we’ve asked for documents to be released, we’ve asked for them electronically and in a searchable format. So this is in keeping with the standard that I think we’ve established earlier.

**Mr. Bob Delaney:** I’m not quarrelling with the act of doing the search. All I’m trying to do is to say that in the event that this turns out to be more work than any of us at this committee can fathom from the distance that we sit, you might want to include enough language to allow them to advise on the status as of the end of two weeks.

Or to produce more documents in separate batches, or—I’ll leave the language up to you, but all I’m trying to do is to say in this and in other similar motions, would you consider language that might take into account the administrative burden of fulfilling the request? We have no trouble with the request.

**The Chair (Mr. Shafiq Qaadri):** Gentlemen?

**Mr. Victor Fedeli:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We’ll move to the vote. Those in favour of the motion, as read? Those opposed? Motion carries.

Mr. Fedeli?

**Mr. Victor Fedeli:** I don’t know the order that you have them in, I’ll just read them as I have them.

I move that the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget and Treasury Board within two calendar weeks of the date of the motion passing: all documentation and correspondence, electronic or otherwise, between April 23, 2012, and May 7, 2013, related to the cancellation and relocation of the power plants in Oakville and Mississauga including, but not limited to, documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Vapour-lock, Project Apple, Project Banana, Project Fruit Salad, and that the documents be provided to committee in a searchable, electronic PDF.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any further comments? Mr. Delaney?

**Mr. Bob Delaney:** Again, Chair, I’d just like to ask Mr. Fedeli whether or not, given that two weeks is a short span of time, he would be willing to include language that allows the agencies to either do this in batches or to advise on progress or whatever he feels is reasonable in the circumstance. We have no problem with the fulfillment of the request.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Any further comments, gentlemen?

**Mr. Victor Fedeli:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** The motion is now being called for a vote. Those in favour of the motion as just read by Mr. Fedeli? Those opposed? The motion carries.

Mr. Fedeli?

**Mr. Victor Fedeli:** I move that all documents received by the Standing Committee on Justice Policy throughout the course of its hearings into the Oakville and Mississauga gas plant cancellations be made publicly available by means of distribution to committee members and that all such documents be considered open and unrestricted for public viewing.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Just before I open the floor, there are some documents which I suppose are in a mid-zone here. Do we want to comment on that?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** There are documents from Infrastructure Ontario, the Ontario Power Authority and Cabinet Office right



now that are asked to remain confidential in terms of distribution. So it's up to the committee to decide on how to deal with them.

**The Chair (Mr. Shafiq Qaadri):** So, technically, they have been received by the justice policy committee, although they have been sort of guided to only one member per caucus and not to the full committee and, therefore, not to the public yet.

**Mr. Victor Fedeli:** And this is why, Chair, this motion is here. We want everybody to be able to see all documents now.

**The Chair (Mr. Shafiq Qaadri):** All right. Does legal counsel need to weigh in on that?

**Mr. Peter Sibenik:** No.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Any further comments on this particular motion? Mr. Delaney?

**Mr. Bob Delaney:** Chair, I have a problem with it. I find it ambiguous. Does the motion refer to documents already received or does it refer to documents received and moving forward? That's not clear in the motion.

**Mr. Victor Fedeli:** It says—may I, Chair?

**The Chair (Mr. Shafiq Qaadri):** Please.

**Mr. Victor Fedeli:** —“all documents received.” It's past tense, “received.”

**Mr. Bob Delaney:** Past tense. Okay.

Chair, before we vote on this, I think it's fair to ask staff to clarify what documents are currently sealed. If we're going to make reference to documents that have been submitted in confidence, in order to make an informed judgment I'd like to know what documents—

**The Chair (Mr. Shafiq Qaadri):** Thank you. A reasonable request. Here it is.

**Mr. Bob Delaney:** —are currently sealed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** As mentioned earlier, we've received documents from Infrastructure Ontario. We also received two sets of documents from the Ontario Power Authority, as well as, recently, late last week, we received documents from Cabinet Office.

**Mr. Bob Delaney:** Chair, both Infrastructure Ontario and the Ontario Power Authority have written to raise concerns about privileged and confidential information that could potentially damage the public interest. Given that, I would like some comments from legal staff on what are the ramifications to the government and the committee on releasing documents that were provided to the committee in the express understanding that they remain confidential.

**Mr. Peter Sibenik:** Well, Mr. Delaney, I'm not aware of the contents of the information that has been provided to the committee Clerk. However, the order, if passed, would be an exercise of parliamentary privilege. The committee's entitled to the production, and matters like solicitor-client privilege, confidentiality, litigation privilege, these other kinds of non-parliamentary privileges, must yield to parliamentary privilege. It is open to the committee, however—I might say that if the committee wants to go in camera and hear submissions from

these various individuals who have asked for confidentiality, to hear those concerns, probably in camera, as I suggest, it's open to the committee to take that approach.

**The Chair (Mr. Shafiq Qaadri):** I would also just add to legal counsel's remarks that in the exercise of parliamentary privilege there is sort of an understanding that these documents, because of their sensitive nature, are certainly meant for the committee, and if they so deem that they keep it either confidential, which is perhaps the hope by the suppliers, or if they absolutely release it to the public, there's a delicate balance there. So while I'm very happy to entertain the motion as presented, I just flag for you that the exercise of parliamentary privilege is a noble act and not to be abused.

**Mr. Peter Sibenik:** If I could add one further comment, Mr. Chair, I think what happened in the Afghan ruling in the House of Commons in Ottawa is instructive. In that case, there was a near all-party agreement that was reached with respect to how the committee would see these kinds of confidential documents that were before the House of Commons on that occasion, and so there was, in effect, an eminent persons' panel that reviewed the documents to see whether it would be reviewed by the full committee. So there was some accommodation, I guess you could say, to the concerns that were raised by various individuals that these were sensitive, confidential documents. It's up to the committee. There could be a parliamentary process; there could be an extraparliamentary process, I guess you could say. But it's up to the committee to decide that.

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**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Thanks once again, Chair. My question to our counsel is: Please tell us once again which sets of documents are outstanding which are currently in the confidential realm that we are referring to here? Just take us through each of the—are there two or three?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** So, if you remember, we had requested after David Livingston's presentation—there was a document request, for notes of meetings or emails with Shelly Jamieson, Murray Segal and David Lindsay, with respect to the Oakville gas plant and the status of it.

**Mr. Victor Fedeli:** So, I just want to do these one by one.

With Oakville, that contract is done; it's signed. We have the paper transferred between each and every one of those people. Again, personally, I don't have any difficulty, which is why I'm bringing this motion—that's a deal that's done. There's nothing commercially sensitive any longer. We're looking for full disclosure to the public.

What's the next one, then?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** The next one: From the OPA, when the committee had moved a motion that the OPA provide any and all reports and correspondence from their legal counsel in respect of their internal investigation of the conduct of



Jesse Kulendran and her role in the OPA's production of documents. That was asked to be kept confidential.

**Mr. Victor Fedeli:** If I may comment on that one: Once again, we have two different people, two different groups of witnesses—one on one side and three on the other—stating which area of discussion has been truthful. I think full disclosure in this case—there's nothing commercially sensitive about getting to the truth about which group is telling the truth here or not. I have absolutely no hesitation to bring those documents forward as well.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** The next one is with respect to when Kristin Jenkins came; there were two documents requests from her. We received a letter from the OPA asking to be confidential. I don't have the exact request.

**Mr. Victor Fedeli:** Is that the big one-inch package with the arbitration that goes back and forth? Each one of the versions is close to the last, with a few minor changes?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I'm not sure, Mr. Fedeli; sorry, I'm not sure exactly what documents—

**Mr. Victor Fedeli:** This is with respect to Oakville, if I'm not mistaken. So again, both the Oakville and the Mississauga contracts are done. They're out there; they are completed. There should be nothing commercially sensitive that we're not entitled to share in full disclosure and transparency. These are done deals. There is not a pending deal; they've been announced. Cheques have been written: the government wrote a cheque for \$40 million; OPA wrote a cheque for \$210 million. In Mississauga, we paid \$150 million for EIG, the American hedge fund lender. These are cheques that are written, so I have no hesitation to see that contract issued.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney.

**Mr. Bob Delaney:** Chair—

**Mr. Victor Fedeli:** I wasn't finished yet.

**Mr. Bob Delaney:** Oh, then please finish.

**Mr. Victor Fedeli:** Are there any more non-disclosed?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Going back to the conduct of Jesse Kulendran, Mr. Wallace also sent documents and asked for it to remain confidential. He provided further information in addition to the OPA providing information.

**Mr. Victor Fedeli:** I appreciate that. My same comments would stand: that we've got two different parties here. We need to get to the bottom of which group is telling the truth. I think full disclosure is important. Are there any other groups?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** That's it.

**Mr. Victor Fedeli:** Then I say there is one more, and that's the interim report. The interim report is also a document that's been received by the Standing Committee on Justice Policy, if I'm not mistaken.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We're still in the midst of reviewing it, yes, Mr. Fedeli.

**Mr. Victor Fedeli:** That would be one of the documents we're referring to as well, then.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** No, I don't—

**Mr. Victor Fedeli:** It's a report that was received?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** No, that's our report.

**The Chair (Mr. Shafiq Qaadri):** No, technically that's our own.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** That's our own internal document.

**The Chair (Mr. Shafiq Qaadri):** It's not really received; it's generated by us.

**Mr. Victor Fedeli:** Fair enough. Thank you.

**The Chair (Mr. Shafiq Qaadri):** All right. Mr. Delaney.

**Mr. Bob Delaney:** Chair, where to start? It is not up to Mr. Fedeli to decide what is and isn't sensitive. In fact, the groups that we've been discussing here—cabinet, Infrastructure Ontario, the Ontario Power Authority—had specific reasons to keep the documents that they shared in confidence with the committee privileged.

What would be reasonable would be to hear from each of those agencies before the committee overrides that and makes what may be a reckless decision, and the point we're trying to make, Chair, is we should do the responsible thing as a committee, and the responsible thing is to hear from the agencies that supplied the documents first. To this end, I'd like to quote, March 18, when Colin Andersen wrote to the committee with respect to document disclosure, and he said, "If privileged and confidential information is disclosed publicly, Ontario will face difficulties in its dealings with investors and counterparties, current and future, who will not be willing to participate in competitive tenders if there is a risk that proprietary information will be released publicly in a committee process."

We need, as a committee, to be very careful here. We have been sent, in writing, very serious concerns about the sensitivity and the value of this information from the head of the Ontario Power Authority, and I put it to the committee that public interest is indeed at risk here and that what we are being asked to do is a reckless course of action. These documents have been flagged as sensitive, and prior to making this determination, I think it's prudent and fair that we hear from the individuals who requested that the items remain sealed as to why they asked the committee to protect that information. We have not heard from them, and we're asked to override that request.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Are there any further issues before we consider this?

**Mr. Rob Leone:** I do have one, Mr. Chair, and a few comments to make with respect to this. Certainly what I'm hearing from people wherever I go is that they're fed up with the fact that they can't get some basic answers to simple questions.



The time to do the responsible thing with respect to document disclosure was when we first asked for documents over a year ago. I think people are certainly eager to get the answers to the legitimate questions that they have, and they're acting through us to get—we're acting through them, I should say, to get those questions answered. The responsibility, I think, certainly lies with this committee to do the right thing when we are tasked with that, and right now, what we're tasked with is getting to the bottom of what happened with the cancellation of two power plants and the cover-up that has ensued. That is our task here, and we're not going to get any further ahead if we're going to spend weeks upon weeks debating whether or not this document should be included or not included, and so on and so forth.

With the greatest respect to the comment that you're hurting the OPA's position to whatever, make other deals and so on and so forth, the province of Ontario's deals, the very fact that you've cancelled contracts has already hurt the province's reputation with respect to doing business with people in the province of Ontario. That is the crux of the matter here, and at the end of the day, what we're faced with are taxpayers footing the bill of \$1 billion, with no power plants being built. That's the issue before us today, and unless we get to the bottom of what happened, who knew what when, how much these things actually cost in terms of the cancellation fees and who ordered the cover-up, we're not going to be able to sufficiently do our tasks here. So let's get to the bottom of it. You've had your opportunity to disclose these in a proper manner. You chose not to do that. You can't come now at the eleventh hour and say to us, "We need some more time in terms of what documents can or can't be disclosed." I just don't accept that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

Mr. McNeely?

**Mr. Phil McNeely:** I'll give it to Mr. Delaney here.

**Mr. Bob Delaney:** Chair, if this proceeds, we would like to have the opportunity to propose an amendment, but prior to doing that, I have to ask the other side: We are members of provincial Parliament and we have a responsibility as a committee, first and foremost, to protect the public interest. This motion says that members of the Legislative Assembly cannot be trusted not to make sensitive information public, and I think we should recall when the estimates committee moved a motion for documents when negotiations were ongoing. The concern was that those documents, if made public, would hurt our negotiating position, and that fact was borne out in the testimony of people here.

The government's objection to this is that this request would prove that, as members, we are not able to keep sensitive information confidential, and it would show that members of the Legislative Assembly can't be trusted with commercially sensitive information.

I think this action is reckless, and it's done without even asking the agencies that provided commercially sensitive information to come in here and to explain why

they wish to have information that was provided in full, unredacted, to the committee—and to tell us, as members, why should this protected information remain protected. I think it asks us to make an incomplete and uninformed judgment, and it's not a sensible request.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Are there any further comments before we—

**Mr. Phil McNeely:** Yes, I have—

**The Chair (Mr. Shafiq Qaadri):** Monsieur McNeely.

**Mr. Phil McNeely:** I'd just like say that—

**Mr. Rob Leone:** Mr. Yakabuski wanted to—

**Mr. Phil McNeely:** I'm sorry.

**The Chair (Mr. Shafiq Qaadri):** Sorry. Who's next?

**Mr. John Yakabuski:** Go ahead.

**The Chair (Mr. Shafiq Qaadri):** All right. Mr. McNeely.

**Mr. Phil McNeely:** I'd just like to say that I think with the federal precedent on I think it was the Afghanistan issue, and it was read earlier today, there is a methodology of bringing the facts forward without that risk to undermine the taxpayers' interest in this whole thing. If that works for the federal government, why doesn't it work here at the provincial government? I think that was a good precedent that was set. It was the first time, I think, that was done. It presents the information without losing the confidentiality.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. McNeely.

Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you, Mr. Chair. Well, undermining the taxpayers' interest—it's interesting that Mr. McNeely should say that, as Mr. Delaney talked about protecting the public interest as well. Some \$585 million, at a minimum, as the cost of these cancellations and relocations when everybody on your side said, "We had no idea how much it was going to cost when we made those decisions"—that's not protecting the public interest.

*Interjection.*

**Mr. John Yakabuski:** That's not protecting the public interest.

**The Chair (Mr. Shafiq Qaadri):** Gentlemen, would you mind if we just returned to the particular motion under consideration? I know all that is in play—

**Mr. John Yakabuski:** Well, that is part of the motion. They're talking about protecting the public interest. That's exactly why this committee was set up, Mr. Chair. It was to protect the public interest. It is our determination, and our right as a committee, to make the decision as to what documents we will disclose.

**The Chair (Mr. Shafiq Qaadri):** Thank you. I believe we've sounded everyone out on this as much as is necessary.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney?

**Mr. Bob Delaney:** I would like to propose an amendment to the motion, please.

**The Chair (Mr. Shafiq Qaadri):** We need it in writing, Mr. Delaney.



**Mr. Bob Delaney:** Okay. May I have a few minutes to hand-write it out?

**The Chair (Mr. Shafiq Qaadri):** Fine—a five- to 10-minute recess.

*The committee recessed from 1653 to 1704.*

**The Chair (Mr. Shafiq Qaadri):** The committee is back in session. We're awaiting the distribution of Mr. Delaney's amendment, forthcoming. I note "publicly" is correctly spelled in the amendment; that's good.

Mr. Delaney, could you please move the amendment that you just submitted and then we'll make a ruling as to its order of—

**Mr. Bob Delaney:** Thank you, Chair.

I move that Mr. Fedeli's motion be amended as follows: To insert, after the words "publicly available," "if, after consultation with the provider of documents, who had requested that potentially sensitive information remain confidential, the committee is satisfied that there is no potential damage to the public interest, and that these documents then be made available to the public." And with the remainder of the wording being removed.

**The Chair (Mr. Shafiq Qaadri):** All right. Amendment to this motion is now in order. The floor is now open for comments, if any.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Delaney.

**Mr. Bob Delaney:** Chair, I think this amendment preserves the intent of Mr. Fedeli's motion. What it does is to give the entities that provided the documents to us, and provided them in good faith based upon our signed undertaking that, as committee members, we would keep information given to us in confidence confidential—I think, having provided the information that is responsive to the committee's request in good faith, we should hear from the entities that had provided that information and allow them to come in here and to sit down and walk us through the documents and answer any questions, which could be either in an open session or in an in camera session, which would allow the committee members to raise any particular point about the document package as a whole or about the documents individually and allow each committee member to speak to whoever has provided the documents.

It would allow the committee members to say, "Why did you ask that such and such a document be protected?" and it would allow the committee members to, for example, say, "Okay, in retrospect, we agree with you and perhaps this lot should be and we can agree that this other lot should not be."

Chair, I think this would be a prudent and a responsible and, I would also put it, a respectful thing to do, given that the documents stem from two fairly significant agencies: the Ontario Power Authority and the government itself.

I think this motion is seriously flawed. I respect and the whole government has respected the ability of the committee to ask for any document; indeed, Chair, the government has offered every document across all ministries. In this particular case, the entities that provided the

documents felt strongly that the documents should remain confidential. I have had the ability to sit in on all of the committee's deliberations to date and I do know that we have not asked the providers of the material why it was held protected, why they wished to have it remain confidential.

I would conclude, Chair, by urgently suggesting to Mr. Fedeli that he accept the amendment, which does preserve the original intent of his motion, and that we keep those documents provided confidential.

Just as clarification, Chair, if I said earlier that the supplier of the documents—that should be an in camera session. I'm not sure whether or not I implied that should be an open session, but if we're going to discuss something with the supplier of the documents, that should be an in camera session where the sensitive information remains protected, subject to a discussion and indeed a debate among the committee, if it so chooses. The government would be very flexible in scheduling our time and we urge Mr. Fedeli and his colleagues to accept this amendment.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Yakabuski?

**Mr. John Yakabuski:** Chair, there is nothing in Mr. Fedeli's original motion that prevents us from chatting with the providers of the documents. Mr. Delaney's amendment would compel us to do that. As a committee, I think we have the ability to make those judgments. I would like to have a vote on the amendment now.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any further comments? Seeing none, we'll now vote on Mr. Delaney's proposed amendment to Mr. Fedeli's main motion.

**Mr. Bob Delaney:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote. Those in favour?

**Mr. Bob Delaney:** Of the amendment?

**The Chair (Mr. Shafiq Qaadri):** Of the amendment.

#### Ayes

Albanese, Delaney, McNeely.

#### Nays

Fedeli, Leone, Tabuns, Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** The amendment is defeated. We now return to the main motion. Proceed to the vote.

**Mr. Rob Leone:** Recorded vote.

#### Ayes

Fedeli, Leone, Tabuns, Yakabuski.

#### Nays

Albanese, Delaney, McNeely.

**The Chair (Mr. Shafiq Qaadri):** The motion carries. Mr. Fedeli, next motion.

**Mr. Victor Fedeli:** Thank you. I want to draw your attention to “Tuesday, May 7.” I move that the order of witnesses be amended on Tuesday, May 14, 2013, so that the Liberal witness slot is scheduled for 8:30 a.m., the NDP witness slot is at 3 p.m. and the PC witness slot is at 4:30 p.m.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Comments? The motion is in order. All in favour of the motion? All opposed? The motion carries.

Mr. Fedeli.

**Mr. Victor Fedeli:** Chair, I need a 10-minute recess.

**The Chair (Mr. Shafiq Qaadri):** A 10-minute recess. *The committee recessed from 1712 to 1722.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee is back in session. Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you, Chair, for honouring my request.

I move that the Standing Committee on Justice Policy requests the following documents from the Premier’s office within two calendar weeks of the motion passing: all documentation and correspondence, electronic or otherwise, between January 1, 2010, and May 7, 2013 related to the cancellation and relocation of the power plants in Oakville and Mississauga, including, but not limited to, documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana and Project Fruit Salad, and that the documents be provided in a searchable, electronic PDF.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. The motion is received. It’s in order, but maybe you might want to specify which Premier.

**Mr. Victor Fedeli:** The Premier’s office.

**The Chair (Mr. Shafiq Qaadri):** They are separate now, as you can probably gather.

**Mr. Victor Fedeli:** To May 7, 2013.

**The Chair (Mr. Shafiq Qaadri):** You understand, right? They are separate offices, separate staff, separate documents and so on.

**Mr. Victor Fedeli:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** All right.

**Mr. John Yakabuski:** Yes, and we want them both.

**The Chair (Mr. Shafiq Qaadri):** I’m just telling you.

**Mr. Victor Fedeli:** We want them all.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** Well, Chair, this is familiar territory. We have no problem with the committee requesting the documents, but what we would ask, given that the scope of the search spans potentially three years and more than four months, is that the motion allow, perhaps, more than two calendar weeks and ask that in the event that the task cannot be completed within two calendar weeks that the office table a progress report and an esti-

mate of time required for the job to be complete. Would you consider such an amendment?

**The Chair (Mr. Shafiq Qaadri):** The floor is open. Mr. Fedeli?

**Mr. Victor Fedeli:** I would look forward to calling the vote, Chair.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

**Mr. Phil McNeely:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. McNeely.

**Mr. Phil McNeely:** I’d like 10 minutes to consider this. This just landed.

**The Chair (Mr. Shafiq Qaadri):** Ten-minute recess.

**Interjection:** Five minutes.

**The Chair (Mr. Shafiq Qaadri):** A five- to 10-minute recess.

*The committee recessed from 1725 to 1730.*

**The Chair (Mr. Shafiq Qaadri):** Committee’s back in session. We have a motion before the floor with reference to the Premier’s office, both current and foregoing, and I think we’re ready to call the motion to order.

Those in favour of this motion? Those opposed? The motion carries.

Mr. Fedeli.

**Mr. Victor Fedeli:** I have the final motion from our side, Chair.

I move that final submissions of dissenting reports be extended until 9:30 a.m. on Wednesday, May 8, 2013.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. This motion is under consideration by the Chair. I would like to advise you that it is in fact the Chair’s prerogative under standing order 131(d) whether to accept this motion or not, but given the stunning generosity of the Chair to date, he will allow this motion to stand and be accepted and move the deadline, subject to your vote, from 6 p.m. today, but firm deadline 9:30 a.m. tomorrow. Otherwise, I will have to prescribe medication for Mr. Parker and others logistically.

The motion is now before the floor. Any comments? Yes, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, thank you, and I’m sincere when I say thank you for your generosity in accepting this motion for the floor.

**The Chair (Mr. Shafiq Qaadri):** I’m touched by your sincerity. Thank you.

Are there any further issues before this—

**Mr. John Yakabuski:** I would speak, but I don’t want to get emotional and start to cry.

**The Chair (Mr. Shafiq Qaadri):** The committee thanks you specifically for that, Mr. Yakabuski.

All in favour of this motion? All opposed? Motion carried.

Is there any further business before this committee?

**Mr. Peter Tabuns:** Better not be.

**The Chair (Mr. Shafiq Qaadri):** I thank you for your endurance. Committee is now adjourned.

*The committee adjourned at 1731.*









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JP-20



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Second Session, 40<sup>th</sup> Parliament

**Assemblée législative  
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**Official Report  
of Debates  
(Hansard)**

Tuesday 14 May 2013

**Journal  
des débats  
(Hansard)**

Mardi 14 mai 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 14 May 2013

Mardi 14 mai 2013

*The committee met at 0829 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting of the Standing Committee on Justice Policy of the Parliament of Ontario to order.

## MR. TIM HUDAK

**The Chair (Mr. Shafiq Qaadri):** I'd like to welcome our next presenter, the honourable Tim Hudak, leader of Her Majesty's official opposition. Mr. Hudak, I'd invite you to be sworn in by our Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Tim Hudak:** I do.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hudak, I believe you're very familiar with the protocol here. You have five minutes for your opening address, and then rotation by questions. I'd invite you to please begin now.

**Mr. Tim Hudak:** Yes, I have spent some quality time in committee over the years. Thank you for the invitation, Chair, and the kind words.

Members of the committee, I appear here this morning out of respect for this committee and its important mandate to get answers to some very serious questions: Why were large power plants forced on communities in Mississauga and Oakville that didn't want them? Why were the contracts unexpectedly ripped up by the Liberal government, and at what cost to taxpayers? Then who ordered the documents to be hidden from the public eye to cover up these decisions to protect members of the Liberal Party?

The Liberals themselves profess that this was no mistake. It wasn't policy-related; they say themselves, including Premier Wynne, that it was a strictly political decision. That means, Chair, that the Liberals made deliberate decisions to sign these contracts and then rip them up, no matter the cost. They made deliberate decisions to orchestrate a massive cover-up of relevant documents and the true cost to taxpayers.

This included, quite frankly, a shameful closure of the Ontario Legislature for four months to prohibit this com-

mittee from doing its important work. The only logical conclusion to draw from this ongoing pattern of behaviour is that if Kathleen Wynne and the Liberal government get away with this, they'll do it again.

The insinuation that anyone other than the Liberal Party is responsible for this fiasco is an insult to the intelligence of every Ontarian. It's a betrayal of the people who are now on the hook for hundreds of millions of dollars to save a handful of Liberal seats in the last election.

The sad reality is, the deeper we dig, the more troubling the revelations. I fear that we've only begun to scratch the surface. This reinforces my view that the best and only way to get the answers taxpayers deserve is through a judicial inquiry. Just as the public interest was well served by the Gomery inquiry in the federal sponsorship scandal, so too the interests of the Ontario taxpayer will be best served by a judicial inquiry into Liberal behaviour. A judicial inquiry led by a new government would have the authority to uncover exactly how this scandal happened, who was responsible, and if any of the money can be recouped. If criminal wrongdoing is found, those accountable should be prosecuted to the fullest extent of the law. We have heard weeks of contradictory testimony, selective memories and revelations of missing documents and purged emails. Sadly, it has become clear that the only way to get some witnesses to tell the truth is the potential for jail doors to start slamming shut behind them.

In closing, I had come to the conclusion some time ago that to restore hope to this province, to get Ontario back on track, to bring more jobs to Ontario, we must change the government that leads this province.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hudak, for your introductory remarks. I now offer the floor to the government.

Just before I do, I would encourage all members to please observe parliamentary decorum, not only for all witnesses but in this particular case, as we have a sitting MPP before us.

**Mr. Del Duca,** 20 minutes.

**Mr. Steven Del Duca:** Thank you very much, Mr. Chair. Good morning, Mr. Hudak.

**Mr. Tim Hudak:** Good morning, Mr. Del Duca.

**Mr. Steven Del Duca:** It's great to see you here before this committee, I guess, after the third time or so



that you were invited to appear. I hope you weren't up too late last evening celebrating your Bruins' big victory.

**Mr. Tim Hudak:** It was a very good game of hockey, and the Leafs have lots to be proud of as well. A good young team; I think they'll make a big playoff run next year.

**Mr. Steven Del Duca:** That's great. I'd like to start by showing a short video for the committee. I believe I need unanimous consent to do so.

**The Chair (Mr. Shafiq Qaadri):** You need majority consent. Do we have majority consent for this particular video? It seems that you do not have such, Mr. Del Duca. You may continue.

**Mr. Steven Del Duca:** I am quite sorry to hear that. I'm not quite sure why the folks on the other side would not want us to show the video.

I understand that we do have documents that are being passed out to members of the committee. I'd like to call your attention to PC doc 1, if you have a chance to take a look at it. This is a document that shows a picture that was taken of your October 5, 2011, campaign announcement at the site of the Mississauga power plant. In response to a question about what you would have done if you had won that 2011 election and inherited that site, you announced very clearly that it would be "done, done, done."

So I think it's pretty clear that during the 2011 election campaign you made a promise to cancel the Mississauga power plant if you were elected. Is that correct?

**Mr. Tim Hudak:** Well, let's be clear about this, Mr. Del Duca, because I think folks understand what you're trying to do here. Let's talk about some background on this issue. The PC Party had never supported forcing gas plants into Mississauga or Oakville. In fact, Chair, as I think members of the committee are well aware, that's a PC policy dating back to the 1990s, when we faced a similar concern and then Energy Minister Jim Wilson said that no, we wouldn't put a gas plant in Mississauga, an unwilling host community. That's been our consistent position for—what?—15 to 17 years.

Now let's get this straight. It was the Liberal government, Mr. Del Duca, that decided to force gas plants into Oakville and Mississauga. It was a Liberal government that decided then to cancel the plants and rip up those contracts, at an extraordinary cost to taxpayers that we still don't even know to this day, Chair, just how much we're on the hook for for the cancellation of these gas plants. And it was you who decided in the campaign—who were pro the gas plant and then changed your mind against it.

Our position has been absolutely clear: We've been against the forced implementation of gas plants in those communities for 15 to 17 years. Quite frankly, Chair, the result of that was that the cost to the taxpayer would have been zero, because we wouldn't have contracted to build those gas plants in the first place.

**Mr. Steven Del Duca:** I appreciate your version of the background, but I guess there are a couple of things that I'm trying to get really clear. First of all, in the Missis-

sauga case, when a local community group that was opposed to that particular plant had the opportunity to meet with your energy critic, Mr. Yakabuski, he said very clearly to them that he didn't see a problem with the plant. They certainly took that to mean that he was speaking on behalf of your party and your caucus.

So to go back to my original question—I just want to make sure that I understand clearly—when you told the people of Mississauga and, frankly, the people of Ontario during that 2011 election campaign that if you were elected, that plant would be "Done, done, done," I am correct in saying that you were going to cancel that plant and relocate that if you were elected.

**Mr. Tim Hudak:** We never would have built these plants in the first place—

**Mr. Steven Del Duca:** That's actually not what I'm asking, though.

**Mr. Tim Hudak:** —we have a long-standing position, Chair—

**Mr. Steven Del Duca:** Just to be clear, I want to know—if you had been elected.

**Mr. Tim Hudak:** —the member says "my version of the background." These are actually the facts and our consistent position. I know, Mr. Del Duca, what you're trying to do here.

**Mr. Steven Del Duca:** Just looking for an answer.

**Mr. Tim Hudak:** When I was helping to get some cash to get ready for university, I worked as a lifeguard for a little while; a great summer job. One of the things we always talked about was called the "drowning man syndrome." Basically, it was something to watch out for. If somebody is going down, they're about to drown, they try to take anybody down with them. That's clearly what's happening with the Liberal committee members here. They made a deliberate decision to force these gas plants into communities. They made a deliberate decision to cancel the gas plants at any cost to taxpayers and then a deliberate decision to try to cover that up; I mean, tens of thousands of documents buried. I see you nodding, Mr. Del Duca—

**Mr. Steven Del Duca:** No, I appreciate the biographical sketch.

**Mr. Tim Hudak:** That's why I've come to this conclusion, Chair.

**Mr. Steven Del Duca:** Thanks very much for that history. Let me go on to an interview that you did with Steve Paikin—

**Mr. Tim Hudak:** The conclusion that's reached, I think, is a very important conclusion—

**The Chair (Mr. Shafiq Qaadri):** I would appreciate if both of you would allow each other to both pose the question and answer the question.

**Mr. Tim Hudak:** I'll wrap up and I'll give Mr. Del Duca his next question. I think the important conclusion here is that with these types of tactics by the Liberals, who are trying to turn this committee into some kind of circus, it is clear—and I'm sad to say this, Chair—that the only way we'll actually get answers is to have a full judicial inquiry, that the threat of jail doors slamming



behind those who are not answering these questions, hopefully that will get some truth from the Liberal members.

**Mr. Steven Del Duca:** Speaking of tactics, let's talk about the interview you did with Steve Paikin—who I think is in the room with us here today—this past February 28, where you said, “With respect to Mississauga, I mean, you're right.... I said, given those circumstances, then we wouldn't build the plant.” You have PC document 1 as well, where we have highlighted text, if you can take a moment to take a quick look at it. It's a flyer from the election. I'm not sure if you're going to take a chance to take a look at this particular document. I'm wondering if you could actually read the highlighted text that we have on this document that appears here, if I could ask you to read that to the committee.

**Mr. Tim Hudak:** Come on, Mr. Del Duca. This should be a serious—

**Mr. Steven Del Duca:** Mr. Chair, it's a request to read—

**Mr. Tim Hudak:** Chair, respectfully, I've had the chance to serve. It's been an honour to serve for 18 years in this Ontario Legislative Assembly. I've had a chance to sit on that side of the committee, on that side of the committee. I had a chance to sit in your chair as well. I respect the work that the committee has been charged to do. I respect the fact that you're all elected members. And I hope that your goal here is to get to the bottom of why the Liberals cancelled the plants, what the true costs were to taxpayers and why there is a deliberate decision then to cover that up. Respectfully, Mr. Del Duca, trying to turn this into some kind of circus by asking me to read documents, that's not going to be helpful to get true answers for taxpayers on why your government cancelled these plants and covered it up.

0840

**Mr. Steven Del Duca:** I can understand why you don't want to read it, but I've asked the witness, Mr. Chair, as has happened with other witnesses who appeared here—

**The Chair (Mr. Shafiq Qaadri):** And he has denied your request, which is his right.

Go ahead.

**Mr. Steven Del Duca:** Okay. I'll read it for you and for the folks who are watching. This is a flyer that was passed out during the 2011 election campaign, and the highlighted text that you are unwilling to read for us says, “The only party that will stop the Sherway power plant is the Ontario PC Party. On October 6, vote Ontario PC.”

Your local candidate's name is on it, your party logo is on it, your party website is on it, phone number, a whole bunch of stuff on there that makes it very clear this is something that was at least portrayed or put out there as speaking on behalf of your party, your caucus, yourself regarding cancelling the Mississauga power plant.

So again, I would just ask you to clarify for us: If you had been elected in October 2011, would you have gone forward with the power plant in Mississauga or would you have cancelled it?

**Mr. Tim Hudak:** Again, Chair, in answer to this question, it has never been the position of the PC Party to support gas plants in Mississauga or Oakville. We would take a very different approach when it comes to energy supply in the province. Quite frankly, Mr. Del Duca, there's only one party that said they would build the plants and then cancelled them, and that's the Liberal Party, not knowing—I think you actually did know—the cost to taxpayers. I think you have tried to cover this up, and then you refused to release documents.

Our position has been perfectly consistent. Why would we build a plant that we had opposed? Why would we build a plant when there were environmental concerns or energy concerns? If you ask me, would I continue building a Liberal power plant under those circumstances, of course not.

**Mr. Steven Del Duca:** So why would your energy critic, Mr. Yakabuski, say he had no problem with the plant? Was he wrong at the time? Are you wrong now? Look, I'm new here so I just want to make sure I understand this clearly. He said something to a local community group very clearly. He said he was okay with it—

**Mr. John Yakabuski:** Point of order: Mr. Del Duca can allege what he wants that someone may have said. I have never in front of this committee—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, points of fact and truth—

**Mr. John Yakabuski:** I'm saying that I did not say that.

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca, please continue.

**Mr. Steven Del Duca:** Thanks very much, Mr. Chair.

To be clear, for folks who are watching, it's not my allegation; it's the folks who live in the community in Mississauga who had the terrific opportunity to meet with Mr. Yakabuski prior to the election. He was the one who told them, in their words, that he didn't see a problem with the plant. You're telling us today that your party never would have gone down that path. I think folks watching can understand that the evasiveness that's going on here, the lack of clarity, is being done for very specific reasons.

*Interjection.*

**Mr. Steven Del Duca:** Let me move on, if I can. It's also true that the PC Party, during that election campaign, paid to send robocalls to voters in the area to highlight your promise to cancel the power plant. Is that correct?

**Mr. Tim Hudak:** I had hoped to have a chance to respond to your earlier comments, saying that somehow we weren't consistent from the 1990s. Again, Mr. Del Duca, there are very serious questions that need to be answered by this committee. For example, why did the Liberal government agree to pay Eastern Power \$40 million for contracts for staff without even the proper receipts, including a \$100,000 EA?

I'm disappointed that you are not using your time to actually get those relevant questions for the taxpayers. Why did the Liberal government decide to spend millions of dollars to pay Eastern Power for the property in



Mississauga and then allow Eastern Power to actually keep that property and potentially sell it off? That's clearly a rip-off of taxpayers, and I'd hope Liberal members would be asking those types of questions as opposed to what another party might have done.

Let me point out an important thing here, Chair. The member, Mr. Del Duca, says that we were opposed to the plant, but every day in the Legislature, Mr. Milloy says we were supportive of the plant. You can't have it both ways. Nor do I find, quite frankly—the bottom line here—that any of this is entirely helpful to getting answers on why the Liberals cancelled these plants and the cost to taxpayers. I wish we would spend our time on something that will get answers for taxpayers on what actually happened.

**Mr. Steven Del Duca:** Okay. You wouldn't actually answer the question about robocalls, so I'm not going to go back to that one in terms of asking whether the robocalls took place. We all know they took place. In fact, I have a script here—

**Mr. Tim Hudak:** Again, with respect, Mr. Del Duca—

**Mr. Steven Del Duca:** It's PC doc 3, if I can read it to you. I'll read the script to you, actually, if you don't mind. This script says, "Hi there. This is Geoff Janoscik, your Mississauga South Ontario PC candidate. I'm calling about the ... power plant that the Liberal government decided to build in your backyard. I'm against this power plant, and as your MPP, I will fight to stop the power plant from being built."

So it's very clear from the text of this particular script that the PC campaign was very clearly and very aggressively coming out during the campaign against the plant. I guess the question to you that I would have at this point is: With respect to that decision within the PC campaign structure, who was the mastermind around this decision? Who were, to use a phrase I've heard here before, the henchmen?

**Mr. Tim Hudak:** Good, cheap theatre, Mr. Del Duca, in terms of what you're trying to do, and that's obscure what the real issues here are before the committee. I know what you're trying to do. I've had a chance to—

**Mr. Victor Fedeli:** McGuinty, Wynne, Duncan, Sorbara.

**Mr. Steven Del Duca:** As party leader, did you approve of the decision? Did you—

**Mr. Tim Hudak:** Sorry, I think there was a question, Mr. Del Duca, that you asked. It's a fair point. You asked me who the masterminds were. I hope the committee gets to the bottom of this, but, you know, clearly Dalton McGuinty; clearly Kathleen Wynne played a very key role in the cancellation of the power plants—

**Mr. Steven Del Duca:** In your campaign—Dalton McGuinty and Kathleen Wynne played a role in your campaign?

**Mr. Tim Hudak:** I suspect that Charles Sousa, the finance minister, was probably also involved. But here's the point that I made. I appreciate Mr. Del Duca reminding me of this important point. We don't actually know. I

do believe that the testimony we saw here from Premier McGuinty and Premier Wynne was rather evasive and strained the bounds of credibility. I think that's regrettable, particularly from a sitting Premier who said she'd be different. But I think, importantly, we have had—and members of the committee would know far better than I—contradictory testimony from the Liberals. We've heard about deleted emails, ongoing missing documents, the things have been redacted—the technical term for blacked out.

I am concerned that despite the good efforts of committee members who seem to be interested in the real points, they will never get to the bottom of this. I want to reiterate my view, Chair, that I think the only way to get real answers to taxpayers, like questions like Mr. Del Duca asks, like, "Who were the masterminds behind this?"—I think Mr. Del Duca would be better served by a judicial inquiry that will actually compel testimony. The threat of people going to jail if they don't give truthful testimony: Maybe that will rattle enough cages; it will actually get answers on behalf of taxpayers. I'm not going to give up on that. A government I lead will bring in a judicial inquiry to actually get the answers for taxpayers.

**Mr. Steven Del Duca:** Thanks, Mr. Hudak. When you made that absolute and unwavering commitment to the people of Mississauga; when you said, as the video would have shown, as the document shows, that if you had been elected the plant would have been "done, done, done"—just out of curiosity, did you know how much that promise would have cost?

**Mr. Tim Hudak:** I'll reiterate this point and then I'll ask Mr. Del Duca back the question if he's interested in answering it.

We've opposed the forced placement of those plants from the beginning. You can't cancel a plant that has never been contracted in the first place. So the answer to your question is, quite frankly, zero. There would have been no cost because a PC government would not have built those plants in the first place.

I think a more important question, Mr. Del Duca, if you're actually serious about what this committee is supposed to do; if you're thinking instead of trying to please those in the Premier's office and trying to stand up for Vaughan constituents—I wouldn't mind one question from you, saying: How much does this actually cost and why did your party decide to cover it up?

I'll do my best to give those answers, sir. I know you see my face in the Legislature. I wasn't part of the Liberal campaign team; I wasn't part of the Liberal Party. I might respectfully suggest that your questions on how much it costs are better directed to your colleagues.

**Mr. Steven Del Duca:** At that specific point in time, when you made that commitment, when you sent your candidates to tell the people of Mississauga that that power plant would not have been built, would have been cancelled if you had been elected—at that precise moment during the campaign, and with the greatest of respect with a yes or a no answer, if possible, did you



know how much that campaign commitment that you made would have cost?

**Mr. Tim Hudak:** Of course. The answer is zero; we would not have put the plants—

**Mr. Steven Del Duca:** At that particular moment—at that particular point in time.

**Mr. Tim Hudak:** We would not have put the plants in the first place, and therefore the—Chair, I think it's pretty clear. If you don't build the plants, there's no cost of cancelling those plants.

I think Mr. Del Duca understands this and I know he's trying to divert what looks like a trail directly to the Premier's office and Premier Wynne's involvement in this as well. So I understand the tactics he's trying to employ, but the cost of cancelling a plant that was never built—zero. There's only one party that actually decided to build the plants—that's the Liberal Party. We don't know the cost to the taxpayers as a result of those politically motivated decisions as of yet. Perhaps a judicial inquiry will help us get that answer as well.

**Mr. Steven Del Duca:** I wasn't here at that particular point in time, but I do remember the campaign. I followed it fairly closely. I know that you made a big deal, as party leaders do from time to time, talking about making sure your campaign commitments, your platform etc. is completely costed and that the costing is transparent.

So again, I would ask: Do you have any information on the costing or the estimates or anything like that your party would have done? Any background work? Any due diligence whatsoever during that election campaign when you decided to go out so clearly and tell the people in Mississauga, and your candidates did as well—robocalls, flyers, campaign events, photo ops—when you made that campaign promise, like all the other ones that you had in various versions of Changebook, when you made all those promises, they were allegedly costed. I'm just wondering, on this particular promise that you made to the people of Mississauga, again, if I could, with the greatest of respect, get a yes or no answer, did you have any kind of costing done around that promise?

**Mr. Tim Hudak:** The answer is yes, and the cost is zero. I don't know if I can be even more clear; if you don't build a plant in the first place—a PC government would not have built that plant—

**Mr. Steven Del Duca:** Well, I'm a little bit confused, because again, as I said earlier, your energy critic, Mr. Yakabuski, and your party were on record as being supportive of building the power plant. So when you made the commitment—

**Mr. Tim Hudak:** Maybe I can ask, Chair: I think that there's an important concern here. The reality is—

**The Chair (Mr. Shafiq Qaadri):** I'd invite you to both, please, allow each other to finish your comments.

0850

**Mr. Tim Hudak:** Thank you, Chair. The reality is, what's this committee supposed to be here for? I understand the game Mr. Del Duca is playing. I equated it earlier to the drowning man syndrome: if you're going

down and your party is going underwater, you just try to grab on to whatever you can and pull them with you. They tried to do it with the Ontario Power Authority. They tried to do that with the civil service. They tried to do it with the other two parties.

I thought, Chair, that this committee was about getting answers to what actually happened instead of asking hypothetical questions about what may have happened. Mr. Del Duca can persist in these questions; I just wish that if he were focusing on what taxpayers care about, he'd ask questions about how much this cost when the Liberals made this decision and why there was a cover-up of documents.

I know Mr. Del Duca has been here for a relatively short time. You did say—you're right—you weren't here in 2011.

**Mr. Steven Del Duca:** Eight months.

**Mr. Tim Hudak:** I appreciate that, but I think members of all parties would agree that it was a travesty that these documents were hidden from the public and that Premier McGuinty, supported by Premier Wynne, decided to shut down the Legislature for four months simply to prevent this committee from doing its important work.

I'm happy to answer Mr. Del Duca's questions; I just wish he'd be asking about what is pertinent to the mandate of this committee and to what taxpayers actually want to know: How much did it cost to cancel those gas plants?

**Mr. Steven Del Duca:** In terms of pertinence, let's talk about this. Which energy experts did you consult prior to making the decision during the campaign in 2011 to cancel the Mississauga power plant?

**Mr. Tim Hudak:** I think that since it's been a long-standing PC policy, it would have come about from decisions made by government, which would have had advice from those who work in the energy field, including civil servants. It just seemed to be perfectly clear: If Mississauga didn't want a power plant, why would you force it on that community? That's why we decided not to put that power plant there. So I guess my question back to Mr. Del Duca is, if Mississauga was opposed to the plant, why did the Liberal government try to force it there in the first place?

**Mr. Steven Del Duca:** If Mississauga was opposed to the plant, why did your energy critic say you guys were okay with the plant?

**Mr. Tim Hudak:** Again, maybe you and Mr. Milloy—

**Mr. Steven Del Duca:** Was he freelancing?

**Mr. Tim Hudak:** Maybe you and Mr. Milloy have to get your stories straight. One person in the House says that we were opposed to the plant; you're saying that we were in favour of the plant. I'm actually the PC leader. I served in cabinet when Jim Wilson was energy minister and subsequently. I can assure you—and you can check the record—that it's been a long-standing PC position, which I have endorsed as leader, not to force these gas plants into communities that don't want them.



Similarly, we have that position when it comes to wind turbines in the province and your feed-in tariff program. I think it's inadvisable, at the least. I think it's a significant breach of democracy to force them into those communities' local decision-making. Our position has been perfectly consistent on this—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Tim Hudak:** —across the board. I guess, Mr. Del Duca, the question that I wouldn't mind hearing from you is, why did you choose to force those plants into unwilling host communities and then rip up the contracts?

**Mr. Steven Del Duca:** It's fair to say, I guess, from all of what we've heard over the last 19 minutes or so, that you didn't consult any particular energy experts—

**Mr. Tim Hudak:** In fact, I think, Chair, with respect, I said the opposite.

**Mr. Steven Del Duca:** —that you weren't quite sure what your critics were doing. Mr. Yakubuski clearly was flying without a net when he was talking to the people in Mississauga around what you opposed or didn't oppose, that you sent candidates out there to say certain things and put together promises on the fly that didn't have any costing. I think that's fair to say.

What I'm taking from the last 18 or 19 minutes of fairly fantastic skating that you've been doing with respect to evading my questions is that there was no costing done, you didn't know what your critics were doing, and you were making promises on the fly. You're not even admitting whether you were going to fulfill those promises or complete those promises if you got elected. I'm not quite sure if you were lying to the people of Mississauga or what the case was—

**Mr. John Yakubuski:** Objection, Chair. He will withdraw the—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca.

To the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** I'm waiting for the objection to be—

**The Chair (Mr. Shafiq Qaadri):** Thank you. I think we've dealt with that, Mr. Fedeli. I'd appreciate it if you'd please continue.

**Mr. Victor Fedeli:** Thank you very much. Did you want to finish any thoughts?

**Mr. Tim Hudak:** Sure. Thank you, Mr. Fedeli. When the member for Vaughan talks about candidates saying things that the government didn't say, about changing their mind on the fly, about cancelling contracts, isn't he actually describing what the Liberals chose to do? I do hope this committee will succeed in its purpose and find out how much it actually cost taxpayers and who ordered the burial of the documents.

Thanks for the time, Mr. Fedeli. Just a statement: I hope that members of the committee—I know the NDP has a somewhat similar view, and I appreciate that—will endorse a call for a judicial inquiry at the end of this. I think there is a frustration that the Liberals have been far from co-operative in actually getting the answers on those essential questions.

**Mr. Victor Fedeli:** Thank you very much. I wanted to take a moment; I've only got two questions, which I promise I'll eventually get to. I just wanted to talk a little bit about the why, the costs and the cover-up. I think if you have followed what we've seen here in the last couple of months, I want to take a moment and talk about what we've learned so far. The Liberals, according to Premier Wynne, made a political decision to cancel the two gas plants. This was designed purely to save five Liberal seats in the run-up to the 2011 election. The gamble—I've used the expression, "they rolled the dice"—was that they would win those five seats, thanks to cancelling the gas plants, and form a majority government.

Now, luckily for Ontario—sadly for the Liberal Party, but very luckily for Ontario—they missed that majority by one seat. That meant the opposition parties now have the opportunity in committee to get to the bottom of various Liberal scandals, including Ornge. That's why we have Ornge hearings today, because we have a Liberal minority. That's why we're here today, talking about this gas plant scandal. They rolled the dice and they lost. To me, this kind of scheming is not what Ontario wants, and I'm truly hoping that you can talk later about the non-confidence vote of this scandal-plagued government.

I want to talk for a moment about the costs. You will recall that we heard this \$180 million, which was quickly turned into \$190 million, which the Auditor General told us is really \$275 million. Then we've heard this \$40-million number on the cancellation of Oakville that the Liberal Party has stuck to. Yet we've had energy experts put it at \$800 million. The OPA vice-president, if you add her numbers up, put it at \$991 million. The official OPA number today is \$310 million. Regardless of the number, it's not \$40 million, the number that Premier Wynne has stuck to.

My first question to you is, do you know how much this Liberal gas plant cancellation scandal cost the taxpayers of Ontario?

**Mr. Tim Hudak:** No. I guess we have some view from the Auditor General's report with respect to the Mississauga cancellation, as you described, Mr. Fedeli. We're pending an investigative report from the Auditor General in August or September with respect to the Oakville cancellation; we'll have a broader picture.

The thing I regret, though, is that Liberal members, instead of trying to get answers to those questions, are trying to obfuscate. They're trying to throw mud to see if something sticks. I know they have their marching orders; I just don't think it's in the interests of taxpayers in the province of Ontario to try to get away from the essential questions; as you said, how much this actually cost. I hope that we will get that answer. I'm not going to give up on it, and if it takes a full judicial inquiry to get that answer, I'll do it.

**Mr. Victor Fedeli:** My next question—these are the same two questions I ask virtually every single witness who's here. When we got this first tranche of 36,000 documents, we went through, and I remember the shock



of my fellow caucus members and the staff, who found so many blank pages and so many redacted documents. And then you read a message that is a reply to Fred but there is no original email from Fred—we knew there were hundreds, and then it seemed like thousands, of missing documents, just flat-out not there; so, blank documents, redacted documents, missing documents.

We've since received a second tranche of 20,000 documents, and a lot of the holes were filled in. We've learned that the OPA was instructed to remove those documents in a cheeky way where they didn't quite say "Oakville" or "Mississauga"; they may have said "SW GTA" for "southwest GTA" and this type of thing. Obviously, they either lawyered up or they just felt downright guilty at removing those documents—physically removing them; they were part of what they originally had. So they turned over 20,000 more documents.

Since that time, we've received hundreds—thousands, actually—of additional documents, all documents we were entitled to in the first place. So they're kind of filling in. We've heard sworn testimony that people have erased their hard drives, have deleted their emails and deleted the deleted files. We now have evidence of people—this is a letter from the cabinet office: "Confirmed during the processing of an earlier request and subsequent appeal that the email accounts of the Premier's former chief of staff, the former principal secretary and the former deputy director of policy no longer existed." We also have a document from the government that says the paper and electronic records are to be transferred to the custody of the Archives of Ontario when they're five years old. These were deleted before they had a chance to even be seen by us. There's a horrendous cover-up here.

My second question to you, Mr. Hudak, is: Do you know who ordered the cover-up?

0900

**Mr. Tim Hudak:** No, I don't. Taxpayers deserve to know. Quite frankly, members of all three parties deserve to know who ordered the cover-up of these documents, the deletion of documents, the disappearance of documents. The media need to know.

I use the term—and this reminds me of why it's accurate—this crosses the line into corruption. When they're deliberate decisions by the Liberals to eliminate documents, to hide them from the taxpayers who pay the bills, that crosses the line into corruption and reinforces my view that if the Liberals get away with this, they'll do it again.

**The Chair (Mr. Shafiq Qaadri):** I just advise all members to please observe parliamentary decorum and language.

**Mr. Victor Fedeli:** Can you repeat your last sentence, Mr. Hudak?

**Mr. Tim Hudak:** The Liberal Premier, Premier Wynne, and members have described it as a political decision, which means it was a calculated and intentional decision to cancel those plants no matter what the costs, and I do believe they knew the range of costs. Then they

decided to cover up the documents. My concern here, Chair, is that if they do it for Mississauga and they do it for Oakville, and they intentionally made those decisions, that tells me they'll do it again if they can get away with it.

Certainly, when a government crosses that line in their thinking, when there's that intent to put the Liberal Party's interests ahead of anyone else's, you have to ask yourself: Do they any longer maintain the moral authority to govern this province? There's too much at stake.

**Mr. Victor Fedeli:** Thank you very much, Mr. Hudak. I'm going to turn the questioning over to Mr. Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, the floor is yours.

**Mr. John Yakabuski:** Thank you very much, Chair, and thank you, Mr. Hudak, for joining us this morning.

We heard over and over again the laudable claim by Premier Wynne that things were going to be different and that she was going to ensure that this committee would have access to all of the information that we could possibly need or require to get all of the answers and get to the bottom of this scandal. Who made the decisions to cancel the power plants? Why were they made? Under what circumstances? Who made the decisions to cover up documents? When was the information known to the Liberal cabinet? Those were supposed to be the issues that this committee was going to get to the bottom of on behalf of the people of Ontario, working through this Legislature.

Can you give me any insight as to why Premier Wynne has refused to reveal when she knew what the additional costs would be to cancel the gas plants? She has verbalized this refusal 130 or more times. She makes this claim that she wants this committee to work, she makes this claim that she wants the Legislature to get on with finding all the facts around Mississauga and Oakville, yet she has refused at least 130 times to reveal to the committee and to the people of Ontario when she knew that there would be more than the sunk costs of \$40 million at Oakville, for example. Mr. Hudak, can you give us any insight as to why she would continue to refuse to divulge or reveal that information?

**Mr. Tim Hudak:** Listen, I wish I could. Quite frankly, I had expected better from Kathleen Wynne. She said she was going to be different, she said she was going to turn a corner, but as you can see by her refusal to answer basic questions, her testimony in this chair a number of weeks ago was highly evasive. As I said—I'm trying to use parliamentary language, Chair, trying to be polite with respect to the work of the Chair—it strained the bounds of credibility; I think that fits the parliamentary language.

Then this has been exacerbated by the fact that it seems to be the goal of the Liberal members to turn this into some kind of game. The mandate of this committee, if I understand—and Chair, you can correct me if I'm mistaken—is to find out what the Liberals did and not what other parties may have done. It looks like the Liberal members of this committee are trying to treat this



as some kind of game. I think taxpayers want answers; it looks like the Liberals want to create chaos.

**Mr. John Yakabuski:** Well, it is clear, Mr. Hudak, that that's precisely what the Liberals want to do. This committee has been given its mandate. It has been charged with its responsibilities. It is about trying to find out who made those decisions to cancel this power plant, who made the decisions to withhold documents and what the costs—the true costs, the real costs—to the people of Ontario are going to be. The exercise that the Liberals seem to be willing or wishing to engage in has nothing to do with that mandate whatsoever.

It is rabble-rousing and game-playing of the lowest kind, because it's drawing in people who had no involvement in the decision to site these plants, sign contracts to build these plants and then, in the midst of the construction of one of them and just prior to the construction of another, tear up those contracts and say, "We're going to relocate them," at a cost we know today at the very least—\$585 million is the lowball cost, as presented by the OPA and the Auditor General. When we get the Oakville cost, it could be even more.

Various witnesses, including Colin Andersen, CEO of the OPA; Shelly Jamieson, the former secretary of cabinet; Peter Wallace, the current secretary of cabinet; David Lindsay, the former Deputy Minister of Energy; Serge Imbrogno, the current Deputy Minister of Energy; and David Livingston, former chief of staff to Dalton McGuinty, confirmed that the cabinet was fully aware long before they claimed there would be significant buckets of costs, over and above what they claimed were the total costs of cancelling these power plants and relocating them.

What do you think they're hiding, and why, when you make these kinds of commitments to this committee as a government, do they continue to try to block the work of the committee in finding and getting to the bottom of this scandal?

**Mr. Tim Hudak:** I mean, that's probably a good question for the Liberal members of the committee: why they're engaging these tactics. I'll give you my best answer on this. Mr. Yakabuski raises the testimony of Colin Andersen of the Ontario Power Authority and other leading civil servants who basically said one thing: that the Liberals knew the costs of cancellation were far higher than they were saying publicly. Then you have Liberal politicians who come here and say the opposite. So, again, Chair, trying to stick with proper language, somebody is not being honest with taxpayers.

The taxpayers themselves can choose who they believe, whether it's the civil servants or the Liberal politicians. But I think, based on the behaviour of the Liberal members here today, it's pretty clear who is not being honest with taxpayers on how much the plants cost. When you hear the Ontario Power Authority, the Ministry of Energy and others say one thing very clearly about who knew the costs and when, and the fact that the costs were far higher than the Liberals said publicly, I think taxpayers can draw their own conclusions about who's telling the truth: the Liberals or the civil servants.

**Mr. John Yakabuski:** Thank you very much, Mr. Hudak. I have no more questions.

**The Chair (Mr. Shafiq Qaadri):** The PC yields its time?

**Mr. John Yakabuski:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We'll move to the NDP side. Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair, and thank you, Mr. Hudak, for being here this morning.

Mr. Hudak, were you a member of the Liberal government that commissioned, cancelled and relocated the Oakville and Mississauga gas plants?

**Mr. Tim Hudak:** No, I was not.

**Mr. Peter Tabuns:** Fine. Did you generate any of the documents related to the cancellation or relocation of the gas plants that were provided by the government?

**Mr. Tim Hudak:** No, I did not.

**Mr. Peter Tabuns:** Did you have anything to do with document production for the estimates committee?

**Mr. Tim Hudak:** I did not.

**Mr. Peter Tabuns:** Mr. Hudak, we appreciate your attendance; you respected the committee. You are irrelevant to this inquiry, with no disrespect.

**Mr. Tim Hudak:** I won't take that personally, Peter.

**Mr. Peter Tabuns:** And I have to say I think it's an abuse of the committee and an abuse of power to have you here this morning. We know what we need to find out. Bringing you in is simply an attempt by the Liberals to try to confuse what's before us.

Thank you for your time. Hopefully we will not waste time like this in any other circumstances.

0910

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mrs. Cansfield.

**Mrs. Donna H. Cansfield:** Thank you very much for coming and speaking to us. I would like to ask a couple of questions. I remember when I first came in, in 2003, and I was in the Ministry of Energy as the conservation person, I met with Steve Gilchrist, and we went over the proposal that you had presented as a government around moving forward on energy, so I know you're a supporter of renewable energy, even way back then.

But I do have a question that I think I've asked virtually every witness, because it's probably one of the most difficult, and really, Mr. Hudak, you alluded to it yourself, and that is the siting of renewable energy or in the issue of power plants, and the real challenge that we have here in southern Ontario where most of the population—96% of the population—of this province resides, and of course that's where the power is needed.

We have suffered for years with transmission issues that I think we can all take responsibility for, every government, for many decades. But people still need to turn the lights on, so there has to be some way that we can work with people, find a process to engage in some way around the siting of either renewable energy or the gas plants. I'd be really interested in hearing your thoughts on how you think we can go about doing that.



**Mr. Tim Hudak:** I appreciate that, Mrs. Cansfield, and I appreciate the tone of the question as well. You've certainly sat in that chair yourself as Minister of Energy, so you know that these decisions are complex. I won't name names, but I remember under the PC government that certain ministers would take up smoking so they could avoid being the Minister of Health. Similarly, I've seen some who will try to avoid being the Minister of Energy in the future. It has significant challenges.

I just think your first recourse when it comes to setting up plants should be to look for willing host communities, and I think that's regardless of the power source, whether it be gas plants—and the consistent position we've held with gas plants as well as with renewable energy when it comes to wind and solar particularly. I think that's first and foremost.

You could probably develop a framework for municipalities and ensure that there are ways that municipalities would more likely be willing host communities, and that's an important discussion I think we could have outside of this committee process, because communities have taken them in the past and they do bring jobs. But certainly forcing them into Mississauga and Oakville was the wrong path, and I know that you did express that in June 2011, yourself.

The other thing I'd say is that one of the reasons why we have so many gas plants coming into the province has been as a result of the rapid expansion of wind and solar power. As you know as a former minister, you can't really base a power system on when the sun shines and the wind blows; you need gas backup. As a result, there has been a greater demand for gas plants in the province.

Listen, I think we have tremendous potential when it comes to lower gas prices as a result of the Marcellus shale finding. I think that has been a game changer. But I think two things need to be done—I'll give you three, in terms of helpful advice.

One, I don't think we need the Ontario Power Authority. I think that was a bureaucracy that was supposed to be there for a short term that ballooned into a rather mammoth bureaucracy. As part of that, we've got to make sure that politicians aren't getting their fingers on the day-to-day operations. I think that's been damaging to business confidence in our province for future investment. Three, I think you should always look for willing host communities. Fourth, I just think when you add on power supply to our province, it should be done on a competitive tendering basis so that you get the best technology at the best value to taxpayers at the end of the day.

So the future of energy I would build, if I do have that honour of serving on the government side of the House again, would be around the workhorses in our system: nuclear, hydroelectricity and natural gas. Other renewables would play an important role, but they do need to be added on when we need the power, and secondly, in willing host communities. I suspect you'd have a similar point of view on that.

**Mrs. Donna H. Cansfield:** Thank you very much.

**The Chair (Mr. Shafiq Qadri):** Mr. Del Duca.

**Mr. Steven Del Duca:** I want to talk a little bit about this concept of a judicial inquiry, a judicial review, whatever it is that you're musing about proposing now. I have to admit I was a little bit surprised yesterday afternoon to hear, through media reports, through social media, and to hear you say it again this morning, that you're interested in pursuing some sort of, I guess, kind of loosely defined judicial inquiry, public inquiry or whatever the right terminology is. I'm a little bit confused by that approach, I have to admit: demanding a public inquiry that your party and you initially opposed into a decision that you actually clearly supported, from the record.

So, with respect to that, again, being a relative newcomer here to this place, I can remember not that long ago hearing very loudly and clearly from senior members of your caucus, some of whom are in the room today—Mr. Leone, when he said back on January 30, “The cost of a public inquiry is excessive; we don't believe that that's necessary.” Rod Jackson, your caucus member from Barrie, January 31, just the next day, said that “items or issues like this should be dealt with through the legislative committees like we originally were supposed to, then we wouldn't have to have an inquiry that would cost millions of dollars.” Again, Mr. Leone on January 30: “We were in the midst of a contempt motion that the committee was going to investigate regarding the cancellation of the Mississauga and Oakville gas plants. We believe that's where this discussion has to take place.”

I can't imagine your caucus colleagues, I assume speaking on your behalf and on your caucus and party's behalf, being any more clear not that many days ago about why a public inquiry or a judicial inquiry or whatever you'd like to call it wasn't necessary. In fact, in their words, it was excessive in terms of spending money, it was a waste of money, and we should be dealing with these items through legislative committees like we've been doing over the last number of weeks.

It strikes me that this, on the eve of your appearance before our committee here today, is nothing but a desperate attempt at a game or a channel changer, taking people's focus away from the fact that, as I said at the conclusion of my first round of questioning, you were flying by the seat of your pants through that 2011 election campaign when it came to making commitments to the good people of Mississauga, telling them one thing and now here today you're saying something that seems to be completely different. I'm a little bit surprised to hear that you would want to go down the path of a public inquiry, I have to admit. Maybe that's standard operating procedure from folks, but it strikes me as something that's completely bizarre.

So going back to the other questions that I was talking about earlier—

**Mr. Tim Hudak:** Chair, I think Mr. Del Duca did raise some important concerns, and I wouldn't mind an opportunity just to respond.

**Mr. Steven Del Duca:** So with respect to when you made your commitments around wanting to relocate Mississauga and Oakville—



**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca, if you'd like to pose your question, he'd be quite willing to answer.

**Mr. Steven Del Duca:** I'm about to get to my questions.

With respect to the decisions you were making during the campaign, prior to the campaign, since the campaign, about which direction you would want to move in with respect to relocating Mississauga and Oakville, just out of curiosity, who did you consult with at the Ministry of Energy before making those commitments?

**Mr. Tim Hudak:** Terrific. So a series of points there that hopefully, Chair, I'll have the opportunity to respond to—

**Mr. Steven Del Duca:** I just want to know who you consulted with at the Ministry of Energy. Just a name—anyone.

**Mr. Tim Hudak:** I always look for a—

**The Chair (Mr. Shafiq Qaadri):** Mr. Del Duca, let the witness please answer.

**Mr. Tim Hudak:** I always look for that opportunity to use that classic line, "There you go again," but maybe I'll save that one for a future debate.

Let me respond. You do ask, Mr. Del Duca—I'm glad that we caught your attention with respect to a judicial inquiry. You're right that the NDP had proposed a public inquiry and we had not supported that. We think a judicial inquiry—which is different under the law—would be a more appropriate measure to take. I do commend my colleagues in the NDP; at least they're trying to get answers, and that is a mechanism to get answers. They've been consistent in that fact. I do wish that the Liberals would be a little bit more serious about getting answers for taxpayers instead of indulging in what you call channel changers. But let me tell you—I'll make my pitch to you and hopefully I'll win you over. But by the look on your—

**Mr. Steven Del Duca:** In this pitch, are you going to name who you talked to at the Ministry of Energy? I'm just curious—or the OPA?

**Mr. Tim Hudak:** By the look on your face, I'm not sure I'm going to get an answer to my question. But let me try.

**Mr. Steven Del Duca:** Anyone at the OPA?

**Mr. Tim Hudak:** So a judicial inquiry—think of it this way. I mean, this is like we saw with Justice Gomery in the sponsorship scandal. You have a judge who can compel testimony—and we think this is actually in the better interest of taxpayers, too, than a full public inquiry. The judge can compel testimony. He can force testimony before the committee, and, as I said, if people perjure themselves or they refuse to give answers, then obviously they could spend time behind bars.

**Mr. Steven Del Duca:** Thanks very much for that answer. So going back to my original question, if I could—

**Mr. Tim Hudak:** I just think when I see, Chair, that the members of the committee—

**Mr. Steven Del Duca:** No, I accept that answer. That's fine.

**The Chair (Mr. Shafiq Qaadri):** One minute left.

**Mr. Steven Del Duca:** Just out of curiosity, if I can ask: anyone at TransCanada that you'd spoken to before making your commitments?

**Mr. Tim Hudak:** It just seems sensible to me that if this—

**Mr. Steven Del Duca:** Eastern Power?

**Mr. Tim Hudak:** —is not working, then a judicial inquiry can get us answers. It may be, like I said, the threat of jail doors closing that will compel truthful testimony.

**Mr. Steven Del Duca:** So anyone at the Ministry of Energy, OPA, IESO, TransCanada, Greenfield—any names at all? Is there one name that you can actually give to this committee about who you might have spoken to to demonstrate responsible due diligence before you made your campaign commitment? Just one name. I mean, it shouldn't be too much to ask.

0920

**Mr. Tim Hudak:** Sure. I do understand, again, the game that you're playing here and you're trying to distract attention from the issues before the committee, but, as I've said, we have talked to a lot of people in the last 15 or 17 years—

**Mr. Steven Del Duca:** Just one name.

**Mr. Tim Hudak:** —including Ms. Cansfield—

**The Chair (Mr. Shafiq Qaadri):** Thank you. To Mr. Yakabuski: The floor is yours; 10 minutes.

**Mr. John Yakabuski:** Thank you very much, Mr. Hudak. Did you want to finish your—

**Mr. Tim Hudak:** Yes, thank you. I'm sorry, Chair. Thanks for the time, Mr. Yakabuski.

We've talked to a number of people over the years, the last 15 to 17. That's why we came to the conclusion that it's unwise to try to force these gas plants into unwilling host communities. I suspect Ms. Cansfield, by the constructive tone of her questions, would probably agree with that. There may have been Liberals who share that position. I suspect there probably are; too bad it's in hindsight.

But I think that across the board, from companies to the Ministry of Energy to those working in the agencies, they would probably agree that the best approach will be to try to find willing host communities for power supply.

**Mr. John Yakabuski:** Thank you, Mr. Hudak.

I actually want to pick up on Mr. Del Duca there and his fixation with the inquiry questions. I think the fact that this committee has failed to be given the opportunity to fulfill its mandate because of the blocking by the Liberal Party, the Liberal government, by Premier Wynne's office sending down her orders to the committee on the way they would conduct themselves and behave here—it's clear that the committee structure itself, which we believe had some tremendous potential, is not functioning the way it should just by the fact of what the Liberals are doing. It makes it even more compelling that somehow we have another vehicle to



actually get to the bottom of what has gone on here, because at every turn, Mr. Del Duca and his friends on the committee have done everything they can to block us from getting to that information. The witnesses who have appeared, those who are either members of the Liberal Party government—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, I'd just also invite you to not attribute negative motives and observe parliamentary decorum, please.

**Mr. John Yakabuski:** Thank you very much. Members of the Liberal Party who have testified here have certainly done everything they can to avoid and evade answers.

On the testimony of the various witnesses, Mr. Hudak—the David Livingstons, the Shelly Jamiesons, the Peter Wallaces, the Colin Andersens; JoAnne Butler, who came here from the OPA and talked about buckets and buckets of costs—that the government would have been fully aware—Premier Wynne, other members of the cabinet. Is there any reason to believe that those testimonies are not completely truthful? Is there any reason to believe that they would have any motive to mislead this committee? Who has the motive to mislead this committee, I guess would be a good question.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, “mislead” is a little too colourful for the committee.

**Mr. John Yakabuski:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hudak.

**Mr. Tim Hudak:** Well put. I think you've done a good job, Chair. Shame on you, Mr. Yakabuski, for using that kind of language.

**Mr. John Yakabuski:** Admonished once again.

**The Chair (Mr. Shafiq Qaadri):** The committee endorses your reprimand.

**Mr. Tim Hudak:** Let me say this to you, because I know some either in the room—and they may be watching or they'll be briefed on it. I've known Shelly Jamieson for a long time. I've known Peter Wallace for a long time. Certainly, I've known the CEO of the Ontario Power Authority in his previous capacity at the Ministry of Finance. I think these are hard-working, responsible civil servants. I have had the opportunity to work with them both on the government side and on the opposition side. I think they're trying to do their best under the circumstances that were compelled upon them.

I do believe, from what I've heard so far, that there was significant political interference in the decision-making of the bureaucracy. First of all, that's regrettable. It sends a chilling signal across the civil service, and at the end of the day, when your motive is to try to cover up Liberal responsibility, culpability, and you try to erase the fingerprints of the Liberal Party on this, that puts the taxpayer on the hook for substantial bills.

So when you ask the question, Mr. Yakabuski, Colin Andersen, Shelly Jamieson, Peter Wallace—I believe them. I think they are extremely competent, hard-working civil servants who are doing their best under very extraordinary and unfortunate circumstances foisted upon them.

**Mr. John Yakabuski:** Thank you very much, Mr. Hudak. I'm going to pass the questions over to Mr. Fedeli.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. You know, I stick with the same theme with virtually everybody who has come and sat in front of us. I like to talk about the costs and the cover-up. I'll ask you the first side of it then, again: Do you think the Liberal government has been honest about the true cost of the two cancellations, Mr. Hudak?

**Mr. Tim Hudak:** Well, look, I think taxpayers, people watching at home, Ontarians, will make that decision based on the facts that are presented and based on the approach that parties will choose at the committee. I think if those who are watching at home today would see two parties taking a very responsible approach and calling this out for what it is—I don't know if I'd use the language, Mr. Tabuns, that I'm irrelevant, but at least I'm trying my best to answer questions.

One party seems to be engaged in trying to turn this into chaos as opposed to trying to turn it into a way of getting answers for taxpayers who had the bill forced upon them. I'll leave that to taxpayers to decide, but I think that the themes emerging from this committee are pretty clear.

**Mr. Victor Fedeli:** From the costs, I'd like to go to the cover-up side. Do you think the Liberal decision to hide the full cost and cover up their involvement in this scandal is worthy of a vote on whether the government remains or maintains the confidence of this House?

**Mr. Tim Hudak:** I do, and I appreciate the question. Let me reinforce why I think that this is important. I mean, clearly, Chair, when it comes to deliberate decisions that have been described as such by the Premier herself, by the former Premier and others—there were deliberate decisions to cancel the plants to save Liberal seats, and it seems that no matter what the cost.

Subsequent testimony from the civil service has revealed that the Liberals knew all along the costs were far higher than they had said publicly. And then there was the cover-up—I don't know how else you could describe it—of tens of thousands of documents and documents that we have never seen. This is important, because taxpayers are actually going to have to pay these bills. They should be made public, but there seems to be an orchestrated campaign to cover those up. I believe that crosses the line into corruption.

Look, I know some members of the media have said, “What do you mean by ‘corruption’?”

**The Chair (Mr. Shafiq Qaadri):** Mr. Hudak, once again, parliamentary language would be welcome.

**Mr. Tim Hudak:** Okay. If this isn't corruption, I don't know what is, and that's why I think that we need to actually have a—

*Interjection.*

**The Chair (Mr. Bob Delaney):** A point of order, Mr. Delaney.

**Mr. Bob Delaney:** Chair, the witness is free to say what he wishes; however, the committee is still bound by



the standing orders, and a member may not make an allegation against another member.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. The point is well-taken. I think it blossoms to the general point of parliamentary language, decorum and non-attribution of negative motives.

Please continue, Mr. Hudak.

**Mr. Tim Hudak:** Let me just cut to the chase then. That's why we brought forward what's called a confidence motion, a want of confidence motion, in the Legislature, that basically says, if the government is willing to make these types of decisions to put the Liberal Party interests ahead of those of the taxpayer, with a jobs crisis and a debt crisis in our province, do they still maintain the moral authority to govern this province?

You either think, Chair, this is a big deal, the cancellation of the gas plants and the subsequent cover-up, or you think it's simply the cost of doing business under a Liberal government. I think taxpayers and Ontarians as a whole would like to see an up or down vote, a yes or a no on that question. I hope we do see that confidence motion called in the assembly before we recess for June.

**Mr. Rob Leone:** Mr. Hudak, I just have one final question, very similar to that question. We started in the estimates committee about a year ago asking a very simple question: "How much did the Oakville and Mississauga cancellations cost, and where in the estimates would we find those costs?" That answer was evaded then, and I think we still don't have the answers today.

So, given the fact that we've been at this for more than a year, do you think that this warrants this Legislature to continue to have confidence in this government?

**Mr. Tim Hudak:** Well, I mean, if the vote gets called, clearly, I will vote for a want of confidence in this government. Clearly, I have reached a conclusion that if we actually want to get Ontario back—if we want to build the kind of Ontario that's strong, that's prosperous, that restores hope to those who are losing hope in this great province—I think of the 600,000 of our friends, our neighbours, our relatives, who are out of work, and they're losing hope. They're blaming themselves, when in reality, they should blame the decisions the government has made that put them into that situation.

If we truly want to get Ontario back on track, that's a leader in jobs and spends within its means, we need to change the team that leads this province. We actually need to change the government to get Ontario back on top and firing on all cylinders again.

**Mr. Rob Leone:** Thank you, Mr. Hudak, for coming today.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

To the NDP: Mr. Tabuns.

**Mr. Peter Tabuns:** I think we've wasted enough time, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

Mr. Hudak, I'd like to first of all thank you for your presence and your testimony today, and the shared

responsibility of occasionally restraining Mr. Yakubuski. On behalf of the committee and the people of Ontario, I thank you in your capacity as leader of Her Majesty's loyal opposition, a post that you have held since June 27, 2009. Thank you.

**Mr. Tim Hudak:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** You're respectfully dismissed.

Committee is recessed until this afternoon.

*The committee recessed from 0930 to 1502.*

## ONTARIO POWER AUTHORITY

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call to order the meeting of the Standing Committee on Justice Policy. I invite our first presenter of the afternoon to please come forward: Mr. Michael Killeavy, director, contract management, of OPA. Mr. Killeavy, welcome to the committee, and I invite you to be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Michael Killeavy:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Killeavy. I invite you to begin your five-minute opening address.

**Mr. Michael Killeavy:** Okay, Thank you. My name is Michael Killeavy, and I am the director of contract management at the Ontario Power Authority, reporting to JoAnne Butler. I am responsible for managing over 17,000 contracts at the OPA, including 15,000 microFIT contracts.

Prior to joining the OPA, I was vice-president and managing consultant at Knowles Consultancy Services Inc. for 10 years. Prior to Knowles, I was a project manager at the regional municipality of Niagara.

I have a bachelor of applied science degree from the University of Toronto, a master of engineering, and a master of business administration degree from McMaster University, and a law degree from Nottingham Law School in the United Kingdom. I have been a professional engineer for 25 years, working both in the public and private sectors.

While at Knowles, I worked for the Ministry of Energy, Infrastructure Ontario, the government of Manitoba and the federal government as well as many private sector clients, including underwriters at Lloyd's of London. I was also one of three consultants at Knowles retained as the fairness adviser in the summer of 2008 to monitor the fairness of the procurement process for the Oakville gas plant. The fairness report was delivered in September 2009. I later applied for a position at the OPA through a competitive process and joined the OPA in November 2009.

As the director of contract management, I was responsible for the management of the Mississauga and Oakville contracts along with thousands of other contracts we administer. I played a role with respect to the



relocation negotiations for both plants, reporting to JoAnne Butler. I also worked for the Auditor General's office in providing information for his audit of the cost of the relocation of the Mississauga plant. I continue to work with them for the audit of the cost of the relocation of the Oakville plant. I have also conducted internal OPA calculations relating to the costs associated with the relocation of the two plants.

It has been suggested to this committee that the OPA's cost estimates have changed. As Colin Andersen stated in his evidence, the costs of relocation of both plants are estimates which are dependent on assumptions and information that becomes available over time. Because of this, numbers can and do change. Similarly, the Auditor General made it clear that his audit of the costs of the relocation of the Mississauga plant is an estimate.

The OPA has been very clear that \$40 million and \$190 million in sunk costs associated with both plants are numbers which are just one part of the relocation costs.

In addition to these sunk costs, there are site-specific and system costs and savings. Some of them would need to be spent regardless of where or how the plants were relocated. Some site-specific costs cannot be estimated with precision until detailed engineering work is done over the ensuing years. Such costs would include transmission connections and gas connections, for example.

System costs include things like line losses, upgrades to transformer stations and replacing transmission lines. These costs were triggered when the decision was made to relocate the plants outside the Toronto area. These additional system costs are also dependent upon estimates and timing of expenditures required to do the work. Another significant cost item related to Oakville is the cost of buying replacement power based on demand in 2017 and 2018.

Adding to the complexity, there are savings associated with paying for power later and discount rates which must be applied to a 20-year stream of payments in order to account for the time value of money. These are the types of issues that have been discussed with the Auditor General.

These cost estimates, over and above sunk costs, will continue to be refined over time. The committee now has the benefit of the Auditor General's report for Mississauga and the OPA's best current estimate of Oakville costs, along with the work of NERA, an independent expert.

Finally, I wish to emphasize one other point. It has been suggested that the OPA failed in its responsibility to alert Ontarians or the government to the fact that cancelling and relocating the two gas plants would result in costs beyond sunk costs of \$40 million and \$190 million. Mr. Andersen and other witnesses have already testified that the OPA made government officials aware that additional costs would be incurred in the categories I have described. These costs cannot be known with certainty at this point in time.

I am now prepared to answer your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Killeavy.

To the NDP side, Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Killeavy, thank you for coming in here today.

**Mr. Michael Killeavy:** You can call me Michael.

**Mr. Peter Tabuns:** Fair enough. The package of documents that you should have before you—the last page, number 12—

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** You wrote to lawyer Rocco Sebastiano at Osler, Hoskin. In February 2011, you asked: "When might we get your opinion on whether residual value of a project might reasonably be considered as damages for a breach of contract?"

"We need to meet with" TransCanada "next week to 'negotiate' alleged loss of profit..." What was his response to your question?

**Mr. Michael Killeavy:** The response to the question was that—my recollection is that he thought that the terminal value, which would be the value of the contract past the 20-year term, could potentially be ahead of damages. It is possible we could be liable for that as well.

**Mr. Peter Tabuns:** The next document I want to have you look at is number 7 in this package. It's an email from you to JoAnne Butler. Can you walk us through this document? Do you have it there?

**Mr. Michael Killeavy:** I do, yes. So this would have been in November 2010.

**Mr. Peter Tabuns:** Correct.

**Mr. Michael Killeavy:** We had been meeting with TransCanada and it wasn't really clear to us exactly what sort of replacement project we were supposed to be negotiating with them as compensation for Oakville.

**Mr. Peter Tabuns:** Okay.

**Mr. Michael Killeavy:** It wasn't clear to us.

**Mr. Peter Tabuns:** And when you said, "What are we building?" you got "blank looks all around"?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** You're talking about the TransCanada people.

**Mr. Michael Killeavy:** I believe so, yes. The problem that we had is that they kept telling us that they had a promise to be kept whole—

**Mr. Peter Tabuns:** Right.

**Mr. Michael Killeavy:** And we didn't really know what that meant.

**Mr. Peter Tabuns:** And did anyone clarify what that meant?

**Mr. Michael Killeavy:** No.

**Mr. Peter Tabuns:** Ever?

**Mr. Michael Killeavy:** No.

**Mr. Peter Tabuns:** You say in here the government was—that things were going too fast: "Gov't has ... promised an agreement ... by 15 December ... far too soon. We don't even know what we're building yet."

**Mr. Michael Killeavy:** That was what TransCanada had told us, was that they had apparently a commitment to have an agreement by the 15th of December 2010.



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**Mr. Peter Tabuns:** Did this undermine your capacity to get a good deal for ratepayers?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** Can you tell us the direction you were getting from the government on this?

**Mr. Michael Killeavy:** I never really had very many dealings directly with the government. It would have been people like Colin Andersen and JoAnne Butler who would be dealing directly with the government. I would be dealing with them; they would be my superiors.

**Mr. Peter Tabuns:** Okay. So any message that was coming to you from the Liberal government was being filtered through them, by them to you?

**Mr. Michael Killeavy:** Correct. I'd be one step removed.

**Mr. Peter Tabuns:** When Ben Chin was talking about government decision-making in here, can you describe what he was talking about? You've got the second line, "Ben seems to think this will be a determining factor in the government decision."

**Mr. Michael Killeavy:** My understanding at the time was that whatever deal that would be negotiated with TransCanada would have to be acceptable to the government.

**Mr. Peter Tabuns:** Ah. Okay. All right. This "making TCE whole" approach: No one ever explained it?

**Mr. Michael Killeavy:** No. It wasn't clear what it meant.

**Mr. Peter Tabuns:** Did you ever go back to Colin Andersen and say, "Can you get clarity from the government on what we're talking about here?"

**Mr. Michael Killeavy:** I think I probably went to JoAnne Butler with that. Yes.

**Mr. Peter Tabuns:** And what did she say?

**Mr. Michael Killeavy:** I don't believe we ever did get an answer as to what that meant.

**Mr. Peter Tabuns:** Okay. Technical and cost information: Did you provide technical and cost information to the ministry at their request?

**Mr. Michael Killeavy:** Sorry, what are you referring to now?

**Mr. Peter Tabuns:** Sorry; it's another question for you.

**Mr. Michael Killeavy:** Oh. Not me directly. I would provide information to JoAnne Butler, Colin Andersen and Michael Lyle, and they would be the ones that would be liaising directly with the government. At my level, I really didn't deal with the government directly.

**Mr. Peter Tabuns:** Were you ever in a position where the OPA was not forthcoming with the government, with the minister and the ministry, about costs and problems you were encountering?

**Mr. Michael Killeavy:** I don't really have any direct knowledge. My understanding was that we would provide information and that that information was communicated.

**Mr. Peter Tabuns:** In document 6, Deb—

**Mr. Michael Killeavy:** Deb Langelaan, yes.

**Mr. Peter Tabuns:** Langelaan?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** Thank you. She emailed you a spreadsheet in October 2010 estimating that TransCanada Enterprises' sunk costs could already be as high as \$130 million. That's more than three times higher than we've been talking about with the \$40 million. Did you update these estimates over time?

**Mr. Michael Killeavy:** This particular estimate was very early on. This would have been October—

**Mr. Peter Tabuns:** Yes. It was October 19, 2010.

**Mr. Michael Killeavy:** I think that this spreadsheet was actually something that we had prepared. I think this is an internal OPA spreadsheet that we prepared. I don't think this came from TransCanada. This was us trying to estimate exactly what the sunk costs were going to be. Ultimately, the sunk costs were actually quite a bit lower than the \$130 million. At that point in time, I believe they were around \$37 million.

**Mr. Peter Tabuns:** Okay. From the time the government announced it was cancelling the Oakville generating station until a new arrangement was reached, was the OPA paying TransCanada any fees?

**Mr. Michael Killeavy:** I'm sorry; paying them—

**Mr. Peter Tabuns:** Paying any money out to TransCanada?

**Mr. Michael Killeavy:** No.

**Mr. Peter Tabuns:** Document 3—

**Mr. Michael Killeavy:** Three?

**Mr. Peter Tabuns:** Yes.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** You had an email exchange with Kristin Jenkins outlining a possible response to cost questions. The suggested response was, "The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now." You respond, "But we aren't in discussions with TCE."

Can you explain? Is that because the government was having discussions?

**Mr. Michael Killeavy:** Sorry, can you just—I'm just trying to orient myself on the email. Oh, I do see. This is September 21, 2011, at 5:10.

**Mr. Peter Tabuns:** Yes.

**Mr. Michael Killeavy:** Yes. At that point in time, we really were not discussing anything with them. That's correct.

**Mr. Peter Tabuns:** So why was it suggested that you would say that discussions were ongoing?

**Mr. Michael Killeavy:** I don't know. I believe that at this point in time, Infrastructure Ontario was talking with them.

**Mr. Peter Tabuns:** And the OPA was completely out of the picture.

**Mr. Michael Killeavy:** Yes—well, I wouldn't say that they were completely out of the picture. I believe that JoAnne Butler was in more or less regular contact

with Jonathan Weisstub from Infrastructure Ontario, who was the person leading the initiative from Infrastructure Ontario's end of things. So there would have been some contact, but we weren't actually at the table with Infrastructure Ontario when they were talking to TransCanada.

**Mr. Peter Tabuns:** And you weren't talking to TransCanada in any way?

**Mr. Michael Killeavy:** I believe at that point in time we weren't.

**Mr. Peter Tabuns:** Because you've got here: "Colin talked to Alex last week to set up a call next week."

**Mr. Michael Killeavy:** That would be Alex Pourbaix.

**Mr. Peter Tabuns:** Yes.

**Mr. Michael Killeavy:** Colin and Alex Pourbaix may have been in contact, but from about—it would have been just after the plant was cancelled by the government. It would be early October 2010 through to about the spring of 2011. We were having regular meetings with TransCanada to discuss the parameters around a replacement project, and we were thinking about building a peaking plant in the Kitchener-Waterloo area.

**Mr. Peter Tabuns:** Right.

**Mr. Michael Killeavy:** So there was a team of people from the OPA—my colleague Deborah Langelaan and some other people who work with us—meeting with the team from TransCanada. We used to meet more or less on a weekly basis, but those meetings basically stopped in the spring, probably around May 2011.

**Mr. Peter Tabuns:** So at this point you just had sporadic contact with them.

**Mr. Michael Killeavy:** Correct.

**Mr. Peter Tabuns:** It was Infrastructure Ontario that was actually dealing with TCE.

**Mr. Michael Killeavy:** That is my understanding, yes.

**Mr. Peter Tabuns:** Do you know if anyone from cabinet was engaged in discussions with TCE at this point?

**Mr. Michael Killeavy:** I don't know.

**Mr. Peter Tabuns:** All right. Document 5, page 3.

**Mr. Michael Killeavy:** Is that the presentation?

**Mr. Peter Tabuns:** That's the winding up of the Oakville generating station contract. It's a slide deck.

**Mr. Michael Killeavy:** Yes. This is the matrix showing the different proposals?

**Mr. Peter Tabuns:** Yes. The quantum comparison.

**Mr. Michael Killeavy:** Right.

**Mr. Peter Tabuns:** So were you involved in either of these counter-proposals?

**Mr. Michael Killeavy:** I think I helped put them together, in fact.

**Mr. Peter Tabuns:** And who instructed these to go forward?

**Mr. Michael Killeavy:** My understanding, again—not dealing directly with the government, it's my understanding from JoAnne Butler that it was Craig MacLennan who had asked us to put together—we called it a second counter-proposal. What had happened was, TransCanada had made a proposal to settle—and you'll

see that in the far left column—on March 10. We then made a counter-proposal towards the end of March, on the 28th, and then my understanding was that TransCanada was quite upset, that they didn't think that there was enough financial value in that counter-proposal and went to the government and complained about the fact that they weren't getting anywhere with us. And that basically led to the instruction coming to submit a second counter-proposal that had a little bit higher financial value.

**Mr. Peter Tabuns:** And Craig MacLennan was the person who instructed the OPA to go forward with the second counter-proposal?

**Mr. Michael Killeavy:** I don't have any direct knowledge. Craig didn't tell me; my understanding was that he told JoAnne Butler, and JoAnne Butler told me to start working on the second counter-proposal.

**Mr. Peter Tabuns:** Okay. How did the staff at the OPA feel about being directed to send in the second counter-proposal?

**Mr. Michael Killeavy:** Well, we were surprised because we thought that based on the analysis that we had done, the counter-proposal that we made on March 28 offered TransCanada fair value. So we were quite surprised.

**Mr. Peter Tabuns:** If you were offering them fair value and they weren't interested, would you have gone forward with that second counter-proposal?

**Mr. Michael Killeavy:** Probably not.

**Mr. Peter Tabuns:** So there was an awful lot of pushing from the Premier's office for you—

**Mr. Michael Killeavy:** I don't know if it was the Premier's office. It was put to me as it was government writ large. I don't know exactly who it was.

**Mr. Peter Tabuns:** Okay. In January 2011, you had discussions with the Auditor General?

**Mr. Michael Killeavy:** January 2011? I don't believe so. Not the Auditor General of Ontario, no. Oh, maybe one of my colleagues—this is when the Auditor General was doing the renewables audit?

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**Mr. Peter Tabuns:** I would have to double-check, but I believe they actually came to you and asked why this contract was cancelled and what the costs were.

**Mr. Michael Killeavy:** Yes, I think I do recall. I believe what happened was, they were in doing an audit on the renewable energy program. They were actually situated in our building, and while they were there, they came and they asked me and I believe my colleague Deb Langelaan why the contract had been cancelled.

**Mr. Peter Tabuns:** And what was the answer you gave the auditor?

**Mr. Michael Killeavy:** It was just a government decision to cancel the contract.

**Mr. Peter Tabuns:** End of story.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** In document 11—this is a memorandum from JoAnne Butler to Deborah Langelaan—



**Mr. Michael Killeavy:** No, from Deborah Langelan to JoAnne Butler.

**Mr. Peter Tabuns:** Oh, sorry, right—the other way around. Thank you. There's a note that Ontario Power Authority and TransCanada Enterprises "met with the Premier's office on January 13, 2011 to discuss strategy for approaching city of Cambridge." Do you know who was in that meeting?

**Mr. Michael Killeavy:** I don't, no.

**Mr. Peter Tabuns:** Did you have any reports of the content of that meeting from your colleagues?

**Mr. Michael Killeavy:** I don't recall.

**Mr. Peter Tabuns:** Okay. With regard to the Oakville contract, when was the public consulted about the siting? Was it before or after a contract had been signed?

**Mr. Michael Killeavy:** During the RFP process, proponents were required to do some public consultation, so there probably would have been some initial consultation by TransCanada, and I'm thinking it would have been maybe in the spring or summer of 2009.

**Mr. Peter Tabuns:** And do you have any recollection of the outcome of that consultation?

**Mr. Michael Killeavy:** When I talked to TransCanada initially, what they told me, basically, was that when they initially conducted the stakeholding, there wasn't really a lot of interest. It was only once the contract had been awarded that things kind of got stirred up.

**Mr. Peter Tabuns:** Is it your assumption that the company proposing the site takes on the risk for ultimately not being able to build if they encounter legal and political impediments?

**Mr. Michael Killeavy:** Correct. That's the model that we use, yes.

**Mr. Peter Tabuns:** And the contract that the OPA had with TCE said that the Ontario Power Authority wouldn't be responsible for lost profits in case of cancellation.

**Mr. Michael Killeavy:** Correct. You're referring to section 14(1) of the contract.

**Mr. Peter Tabuns:** Yes.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** But as we went through these documents—the OPA was told, effectively, to abandon that, was it not?

**Mr. Michael Killeavy:** Well, there was a letter sent on I believe it was October 7, 2010, from the OPA to TransCanada, promising—basically relaying to them that the government had made a decision to cancel the project, that the contract would be cancelled, and that TransCanada would receive the financial value of the contract.

**Mr. Peter Tabuns:** And those words were not ones that the Ontario Power Authority would have used; they were directed to put those in there. Is that correct?

**Mr. Michael Killeavy:** It's my understanding from talking to Michael Lyle, who was our general counsel, that this was something that had been discussed between TransCanada and the government, and then, basically, the OPA was given the task of drafting a letter with TransCanada.

**Mr. Peter Tabuns:** Just to be clear: You would never have said that in a letter of agreement otherwise.

**Mr. Michael Killeavy:** That's right.

**Mr. Peter Tabuns:** Did you have an estimate of the value of those profits at that time?

**Mr. Michael Killeavy:** At that time, I didn't have a very good estimate at all.

**Mr. Peter Tabuns:** Did you have a range?

**Mr. Michael Killeavy:** If you look through the contract, there is the exclusion clause, section 14(1), that excludes consequential damages, including lost profits, so that would bring it down to zero. I think I had to do once a very quick back-of-the-envelope calculation, and I came up with—it was basically the value of the payments that we would have made. It would have been around a billion dollars.

**Mr. Peter Tabuns:** And did the government ask for that number?

**Mr. Michael Killeavy:** I don't know if they did or not.

**Mr. Peter Tabuns:** But you were not asked to provide that number further up the chain.

**Mr. Michael Killeavy:** I think there was an email exchange between myself and one of the internal lawyers at the OPA, and I think maybe our general counsel and JoAnne were also copied on that.

**Mr. Peter Tabuns:** So your general counsel, JoAnne and—

**Mr. Michael Killeavy:** Sorry, JoAnne Butler and Michael Lyle, the general counsel. They may have been copied on the email; I don't recall.

**Mr. Peter Tabuns:** And in that email, you said that if we put this in, the risk of potential expenditure is in the billion-dollar range?

**Mr. Michael Killeavy:** The question was asked of me: What is an estimate of the profits from the Oakville contract? I gave it in that context, as opposed to, "If you put this in, this is the exposure."

**Mr. Peter Tabuns:** Right. Okay. Were you involved in the final memorandum of understanding negotiations?

**Mr. Michael Killeavy:** I was supporting those negotiations. I wasn't actually at the table; I was sitting in my office and basically acting as a resource person if somebody needed something looked up or somebody wanted something calculated.

**Mr. Peter Tabuns:** So were you asked to calculate or give ranges for the cost beyond the simple sunk costs? The gas management fee—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Michael Killeavy:** That's right, yes. We were asked to provide some estimates on that.

**Mr. Peter Tabuns:** And those would be passed on to the team or passed on to at least the OPA participant on the team?

**Mr. Michael Killeavy:** Correct.

**Mr. Peter Tabuns:** I know my time is going to be too short on this one. I'll start and then I'll pick up.

Document 1 contains emails between you and JoAnne Butler.

**Mr. Michael Killeavy:** Document 1?

**Mr. Peter Tabuns:** JoAnne Butler is asking about the cost modelling for the project. She indicates that you were able to reverse engineer costs in the past. Did you do a variety of estimates for the MOU team on transmission losses, on hookup costs—

**Mr. Michael Killeavy:** Are you talking about document number 1?

**Mr. Peter Tabuns:** Yes. In that, simply, you've said here that you've had experience—at the bottom of that page—in modelling the costs and working out the numbers.

**Mr. Michael Killeavy:** At this point in time, December 15, 2011, we would have been working on modelling the—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. I'm just going to pick up where Mr. Tabuns left off: the letter that was sent from the OPA to TransCanada Energy on October 7.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Who signed it?

**Mr. Michael Killeavy:** Colin Andersen.

**Mr. Bob Delaney:** Who wrote it?

**Mr. Michael Killeavy:** I believe it was drafted collaboratively with TransCanada and OPA.

**Mr. Bob Delaney:** Okay. So that language was—did you sign off on that?

**Mr. Michael Killeavy:** Did I sign off on it?

**Mr. Bob Delaney:** Yes. Did you—

**Mr. Michael Killeavy:** No.

**Mr. Bob Delaney:** Were you okay with it?

**Mr. Michael Killeavy:** I didn't sign off on it, no.

**Mr. Bob Delaney:** Talking about the value of the contract, you said earlier—I just want to make sure I understand this—that you had heard about the value of the contract from Michael Lyle, who was told by Kristin Jenkins, who apparently was talking to the government.

**Mr. Michael Killeavy:** I don't—

**Mr. Bob Delaney:** When you were discussing with Mr. Tabuns—

**Mr. Michael Killeavy:** About the financial value of the contract?

**Mr. Bob Delaney:** Yes.

**Mr. Michael Killeavy:** That was a back-of-the-envelope calculation that we did at that point in time.

**Mr. Bob Delaney:** Okay. So at that time, you had no first-hand knowledge of it.

I understand, correct me if I'm wrong, that both contracts were ultimately renegotiated.

**Mr. Michael Killeavy:** Correct.

**Mr. Bob Delaney:** It would be inaccurate to say they were torn up.

**Mr. Michael Killeavy:** Correct.

**Mr. Bob Delaney:** In other words, there was never a suggestion that the contracts would be abrogated.

**Mr. Michael Killeavy:** That's correct.

**Mr. Bob Delaney:** Thank you. The OPA went this route, we've heard in previous testimony, because it would have been more expensive to just rip up the contracts rather than to engage in litigation or to—well, for example, former deputy minister David Lindsay said that paying costs and getting no electricity would not be a good business decision. Would you agree with that?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** When the OPA chose to re-negotiate over tearing up the contracts, was there a concern about maintaining good relationships with these energy suppliers?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Would you categorize the re-negotiations in the case of Mississauga as difficult and complex?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Had construction started at Mississauga before the negotiations got under way?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Did that add to the pressure to get a deal as soon as possible?

**Mr. Michael Killeavy:** It certainly did.

**Mr. Bob Delaney:** When the Auditor General testified before the committee, he confirmed that the longer the delay to halt construction, the higher the sunk costs would be.

**Mr. Michael Killeavy:** That's correct. Our internal estimates were that they were probably spending between \$5 million and \$6 million a month at that point in time.

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**Mr. Bob Delaney:** All right. So the Auditor General said at the time that basically you would be putting money into the ground, and for almost no reason, and then you would have to reimburse the suppliers?

**Mr. Michael Killeavy:** Correct.

**Mr. Bob Delaney:** Was it therefore important from your vantage point to get a deal with Greenfield as soon as possible to minimize the sunk costs?

**Mr. Michael Killeavy:** It certainly was.

**Mr. Bob Delaney:** All right. I have a few questions about Oakville. Earlier, Chris Breen from TransCanada Energy was here to testify.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** He told the committee about all the channels they would have used to deliver on their obligation to build the plant, and he said they were confident that they, TCE, would eventually get the bylaws passed by the town of Oakville overruled by the Ontario Municipal Board, the Ontario Superior Court, Divisional Court or whatever court they needed to go to. So if TransCanada Energy had successfully overturned the bylaws and the building permits were issued, in the case of Oakville, would the sunk costs have been higher if the decision were made to cancel the plant after construction had started?

**Mr. Michael Killeavy:** I think that's a fair statement, yes.



**Mr. Bob Delaney:** Okay. So in other words, the goal was to renegotiate on a new plant rather than to write a cheque and walk away with no electricity produced?

**Mr. Michael Killeavy:** That was the plan, yes.

**Mr. Bob Delaney:** Okay. I understand from Colin Andersen and JoAnne Butler's testimony before this committee that the cost estimates—and I think, in your own opening statement, you said so as well—for both relocations are complex and difficult to calculate. Correct?

**Mr. Michael Killeavy:** They are.

**Mr. Bob Delaney:** For how long did the auditor's office work with you on the Mississauga file?

**Mr. Michael Killeavy:** On the Greenfield South file?

**Mr. Bob Delaney:** On the Mississauga gas plant file.

**Mr. Michael Killeavy:** I believe they were working with us probably from the fall of 2012 till the spring of 2013. So roughly six months or so.

**Mr. Bob Delaney:** Okay. Why did it take the auditor and his office that long to come up with those calculations?

**Mr. Michael Killeavy:** I don't really know. You'd have to ask the Auditor General.

**Mr. Bob Delaney:** In July 2012, when the Mississauga relocation was finalized, the cost was announced initially at \$180 million and then at \$190 million.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** We tabled an email last week before the committee where Colin Andersen confirmed to both the chief of staff and the deputy minister that the cost was, in fact, \$180 million. Is that correct?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Okay. Mr. Andersen testified, "We did provide them with the numbers. That is what you would expect." So does that mean that the numbers the government had been using were those provided by the OPA?

**Mr. Michael Killeavy:** I'm sorry. I'm not sure I follow the question.

**Mr. Bob Delaney:** You've confirmed that OPA provided the chief of staff and the deputy minister with the \$180-million number. Colin Andersen testified—and I'll use his words—"We did provide them with the numbers. That is what you would expect." My question, then, is, were the numbers the government had been using those provided by the OPA?

**Mr. Michael Killeavy:** I believe so, yes.

**Mr. Bob Delaney:** Okay. In terms of the difference between the auditor's findings and the original estimate, would it be accurate to say that the Auditor General provided a more long-term assessment by estimating both costs and savings during the span of the 20-year anticipated life of the plant?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Okay. Talking about the costs associated with relocating the Oakville plant—and again, we know that the government did rely on the OPA's approach when it announced its original costing figures. In the OPA's background from September 24, the OPA talks about a \$40-million sunk cost, as well as \$210

million for gas turbines, and that there would be additional cost for gas management but also significant savings from a lower net revenue requirement. Does that all ring a bell?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Okay. Colin Andersen testified that while additional costs and savings were identified in the memorandum of understanding, there were no numbers attached because they were still—and I'm going to use his words—"to be determined," because, as he said, "more work had to be done." As a preamble, he then went on to say "It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." So at the time of the September 24 deal announcement, was that the information that was available to you?

**Mr. Michael Killeavy:** I'm sorry; you're asking me, did we know the sunk costs were going to be \$40 million?

**Mr. Bob Delaney:** Well, let's do it again. Colin Andersen said that at that time there was more work to be done. Colin Andersen also said, "The \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." So at the time of the September 24 announcement of that particular deal, was the information made available at the time that which you knew? Did you make public the information that you knew at the time?

**Mr. Michael Killeavy:** I believe that we communicated to the government that the sunk costs were going to be \$40 million for Oakville. That was the cost associated with developing the plant.

**Mr. Bob Delaney:** Okay. Thank you. Since then, we know that the numbers have been evolving and changing, and you and others have said so.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** In the past month, we've heard different numbers. Mr. Andersen provided us with the OPA's latest estimate a couple of weeks ago as well as an estimate from an independent report. The OPA produced a document on March 20 which estimated the costs for Oakville to be between \$33 million and \$136 million. Does this speak to the complexity of calculating these numbers?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Talk to me a little bit about some of the factors in the complexity. This is a wide variation: between \$33 million and \$136 million.

**Mr. Michael Killeavy:** Correct. I actually do have a handout that explains the differences between those two cost estimates. Can I distribute it?

**Mr. Bob Delaney:** Sure. The Clerk will distribute it for you, and perhaps we'll come back to it either in this round or in the next round.

**Mr. Michael Killeavy:** Sure.

**Mr. Bob Delaney:** While the Clerk's doing that, we'll talk a little bit about document disclosure. With regard to the document disclosure motions passed by the estimates



committee in May 2012, who oversaw the document search and disclosure process at the OPA?

**Mr. Michael Killeavy:** I don't know. I wasn't involved in that process at all.

**Mr. Bob Delaney:** Would it have been someone from your legal department?

**Mr. Michael Killeavy:** It could have been, yes.

**Mr. Bob Delaney:** How many people could it have been?

**Mr. Michael Killeavy:** I don't know. I don't get involved. Whenever there's a FIPPA request or a request from someone for documents, I'm just asked, "Where are your documents?" And I tell them, "They're on such and such a drive" or wherever they are. I don't manage that process.

**Mr. Bob Delaney:** Okay. How big is the legal department?

**Mr. Michael Killeavy:** I don't know, there's about six or seven lawyers.

**Mr. Bob Delaney:** The OPA had three separate document disclosures. Your chair, Jim Hinds, said in a news conference following the third release of documents that mistakes had been made but that the search had been done in good faith. He said that the OPA is in the business of producing power, not documents. What I think we can take from that document search process—it's fair to assume that that was quite a departure in terms of your normal course of activities at the OPA.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** At the same news conference, when asked about opposition attacks that this was all a government cover-up, Mr. Hinds responded, and I'll use his words, "I don't think cover-up is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us." Would you agree that there was, in fact, no orchestrated cover-up?

**Mr. Michael Killeavy:** I would agree with that, yes.

**Mr. Bob Delaney:** Okay. Again, I'm going to ask an agreement on this: The subsequent document disclosures don't show any evidence of a cover-up, but actually just show the inherent difficulties in responding to such a large-scale request. Correct?

**Mr. Michael Killeavy:** I believe so, yes.

**Mr. Bob Delaney:** Okay. What can you tell me just about the complexity of searching for documents? What was there in that that you had not done before?

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**Mr. Michael Killeavy:** I don't actually do the searches for the documents, so I really don't know.

**Mr. Bob Delaney:** All right. Kristin Jenkins, Colin Andersen and Michael Lyle have all testified before the committee that the OPA was responsible for its own document search and had the final sign-off on what was provided to the Clerk. Mr. Andersen told us, "When all was said and done, it was our decision." So I'm asking you, would you agree that as an independent agency, it was ultimately your responsibility to decide what was provided to the Clerk of this committee?

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** Okay. As legal counsel, would you have provided advice that went into that final decision?

**Mr. Michael Killeavy:** I'm not legal counsel with the OPA.

**Mr. Bob Delaney:** Okay. Was it your role to give an opinion as to whether or not the package complied with the committee's request?

**Mr. Michael Killeavy:** As I've said, I wasn't involved in the document disclosure at all.

**Mr. Bob Delaney:** Would anyone have counted on you for legal advice?

**Mr. Michael Killeavy:** No. I'm not a lawyer, so they wouldn't have, no.

**Mr. Bob Delaney:** That's fine. I'm just exploring it. That's good.

The committee talked at length about a meeting between a Ministry of Energy civil servant and the OPA's VP of communications and an OPA lawyer. We learned that the staff person from the Ministry of Energy had no authority to direct your staff or the OPA's document search. Mr. Andersen has said that it was a meeting to—and he used the words—"compare notes." We know that Ms. Kulendran was very clear in that meeting that it was up to the OPA to make sure you followed up and did your own due diligence on these documents. She testified that "throughout the meeting, I reminded Ms. Jenkins ... that while we were discussing potentially not relevant documents, it was their obligation"—

**Mr. John Yakabuski:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Yakabuski.

**Mr. John Yakabuski:** Chair, Mr. Delaney has been told at least half a dozen times—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, it does not sound like a point of order. If you're disappointed with this line of questioning, I'd suggest you remedy that on your own time.

**Mr. John Yakabuski:** The witness has testified innumerable times that he had nothing to do with the document search, yet he keeps asking him about the document search.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Delaney.

**Mr. Bob Delaney:** Let's start over from the top. Ms. Kulendran was very clear in that meeting that it was up to the OPA to make sure that the OPA followed up and did its own due diligence on those documents, and she testified here that "throughout the meeting, I reminded Ms. Jenkins ... that while we were discussing potentially not relevant documents, it was their obligation to return and discuss with" their "management and their senior legal counsel to make the decisions about what they felt was responsive and relevant."

Apparently that's exactly what happened. Ms. Jenkins testified after the meeting that she did speak directly with Mr. Andersen and legal counsel on what was considered responsive. So were you the legal counsel she spoke with?



**Mr. Michael Killeavy:** No.

**Mr. John Yakabuski:** He said he's not legal counsel.

**Mr. Michael Killeavy:** I'm not legal counsel with the OPA.

**Mr. John Yakabuski:** How many times do you have to be told, Bob?

**Mr. Bob Delaney:** Mr. Lyle was here to testify last week, and he seemed to indicate he didn't have much of a role.

**Mr. Michael Killeavy:** I'm sorry; I didn't hear you.

**Mr. Bob Delaney:** Mr. Lyle was here to testify last week.

**Mr. Michael Killeavy:** Yes.

**Mr. Bob Delaney:** And he indicated that he didn't have much of a role. So if neither of you provided that advice, who did?

**Mr. Michael Killeavy:** I don't know. I wasn't involved in the process. I don't know.

**Mr. Bob Delaney:** Okay. Did someone from your legal department provide that advice?

**Mr. Michael Killeavy:** Again, I don't know. I'm not involved in document searches. I can't really help you, I'm sorry.

**Mr. Bob Delaney:** Okay. No, I understand. I'm asking the questions, and you're giving me an answer.

I think, then, that it's fair to say that if legal advice was given—and we know that the OPA therefore must have been comfortable with its disclosure package—it must be fair to say that there was no deliberate attempt to withhold documents, something I think we've previously agreed on, and that each disclosure would have been done either due to a miscommunication or because search terms were missed. Would that be an accurate encapsulation?

**Mr. Michael Killeavy:** Again, I wasn't involved in the process, so I really can't answer.

**Mr. Bob Delaney:** All right. Let's leave it at that, then.

What have I got in the way of time, Chair?

**The Chair (Mr. Shafiq Qadri):** Three minutes—less than.

**Mr. Bob Delaney:** Let's talk a little bit about commercial sensitivity.

**Mr. Michael Killeavy:** Okay.

**Mr. Bob Delaney:** Many of the documents we're talking about were produced as a result of a motion passed by the estimates committee in May 2012. At the time the requests were made, were you aware that sensitive commercial negotiations were ongoing with Eastern Power and TransCanada Energy?

**Mr. Michael Killeavy:** What was the date again, please?

**Mr. Bob Delaney:** May 2012.

**Mr. Michael Killeavy:** Yes. I was one of the ones doing them.

**Mr. Bob Delaney:** Mr. Andersen wrote to the committee on May 30 in response to the motion. He said that while "The OPA respects the authority of the committee and its interest in receiving this information," there are

also some serious concerns that he and, presumably, the OPA had about the release of the documents before negotiations were finalized. The letter states, "The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without-prejudice negotiations." He goes on to talk about that. Is it fair to say that releasing documents to the public at that point in time had the potential to increase the cost to Ontarians?

**Mr. Michael Killeavy:** I think that's a fair statement, yes.

**Mr. Bob Delaney:** Okay. Did the OPA and the Ministry of Energy have a reasonable responsibility to protect taxpayers while also being open and transparent?

**Mr. Michael Killeavy:** I believe that's correct. Whenever we're conducting the negotiations, we're always trying to keep a very close eye on the costs and keep the costs to the ratepayer as low as possible. If documents had been disclosed, it could certainly prejudice our position in any negotiations.

**Mr. Bob Delaney:** Okay. In the time remaining, could you walk me through some of the thinking at the time?

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Michael Killeavy:** Through the time about the—

**Mr. Bob Delaney:** Some of the thinking at the time with regard to disclosure—

**Mr. Michael Killeavy:** Well, my understanding at the time was that a lot of the communications dealt with were privileged communications of our legal counsel. Obviously, if we're negotiating with someone, we really don't want them to be knowing what we're talking to our lawyers about, in particular. That would be a significant concern. We don't want them to understand how well we understand their costs, for example. That might be something that could be disclosed in those documents. It could certainly injure our negotiating position at the negotiating table.

**Mr. Bob Delaney:** Okay. Thank you, Chair.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Welcome, Mr. Killeavy. Thank you for being here today.

**Mr. Michael Killeavy:** You can call me Michael.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Michael Killeavy:** You can call me Michael.

**Mr. Victor Fedeli:** Thank you. I will.

You have the documents that I have provided? Okay. On document 1, it's between you and Susan Kennedy and JoAnne Butler, and you're talking about Craig MacLennan. He wants an estimate of TransCanada's SWGTA costs.

**Mr. Michael Killeavy:** Southwest GTA.

**Mr. Victor Fedeli:** "SWGTA" is southwest GTA?

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Thank you. It says, "Mike says to call Craig directly." Did you make that call to Craig MacLennan? Do you remember that?

**Mr. Michael Killeavy:** I honestly don't recall if I did or not.

**Mr. Victor Fedeli:** That's fair. So this was in September 2010. Were you aware at the time that Oakville was being cancelled—at the time of this email?

**Mr. Michael Killeavy:** Not in September, no.

**Mr. Victor Fedeli:** Not in September. When would you have become aware that Oakville was being cancelled?

**Mr. Michael Killeavy:** It would have been—my recollection was the day prior to the letter being sent.

**Mr. Victor Fedeli:** So go to my doc 2, then. It's a fun one between you and Corinna Bellomo. She says, "Mr. Killeavy, I lost our bet!! I owe you a Starbucks!!" What was your bet?

**Mr. Michael Killeavy:** I think we probably were having a bet as to what was going to be happening with the plant.

**Mr. Victor Fedeli:** And she lost the bet; you won the bet.

**Mr. Michael Killeavy:** I guess I did.

**Mr. Victor Fedeli:** Did you believe that the plant would be cancelled?

**Mr. Michael Killeavy:** At what point in time?

**Mr. Victor Fedeli:** At that point in time.

**Mr. Michael Killeavy:** At that point in time? I think at that point—

**Mr. Victor Fedeli:** When you made the bet with her.

**Mr. Michael Killeavy:** When I made the bet, I don't think I—I knew about it the day before, but prior to that, there had been a lot of closed-door meetings, and I kind of was connecting the dots that something was up.

**Mr. Victor Fedeli:** You sensed something at that point.

**Mr. Michael Killeavy:** I sensed that something was up.

**Mr. Victor Fedeli:** Okay. Document 3: Again, Craig MacLennan is in there. This is April 15. This is from you to Sean Mullin, Craig MacLennan, all the familiar names.

**Mr. Michael Killeavy:** No, it's from Michael Lyle.

**Mr. Victor Fedeli:** It's from Michael Lyle to all these familiar names, including you. This is April 15. He's talking about a draft letter with respect to mediation and arbitration. So you're familiar, then, with Craig MacLennan?

**Mr. Michael Killeavy:** I have met him on several occasions, yes.

**Mr. Victor Fedeli:** On several occasions.

**Mr. Michael Killeavy:** On other files, not just—he was the—

**Mr. Victor Fedeli:** How often would you have communicated with him, Sean Mullin and Jamison Steeve?

**Mr. Michael Killeavy:** I've never talked to Jamison Steeve or Sean Mullin, ever.

**Mr. Victor Fedeli:** Okay. So only Craig MacLennan.

**Mr. Michael Killeavy:** I would have talked to Craig MacLennan occasionally when I filled in for JoAnne Butler. He was the minister's chief of staff, and I would

sometimes go to meetings on other files and speak with him then.

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**Mr. Victor Fedeli:** Okay. Go back to the NDP doc 6, and that is that chart, again. It was the winding up of Oakville, on April 20, 2011. It was a couple of pages in—four pages in, actually. The replacement project comparison—this one here.

**Mr. Michael Killeavy:** That one?

**Mr. Victor Fedeli:** No, the one after that.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** So Mr. Tabuns asked you about TCE's proposal and OPA's first counter-proposal and OPA's final counter-proposal. He asked you who directed you, and you said it was the government, and when asked whom, you said it was Craig MacLennan.

**Mr. Michael Killeavy:** No. I think what I said was, I understood from JoAnne Butler that it was Craig MacLennan.

**Mr. Victor Fedeli:** You understood from JoAnne Butler—

**Mr. Michael Killeavy:** Correct.

**Mr. Victor Fedeli:** —that it was Craig MacLennan. What makes you understand that?

**Mr. Michael Killeavy:** She told me.

**Mr. Victor Fedeli:** Okay. She told you that it was Craig MacLennan that instructed OPA. This is the Ministry of Energy personnel—

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:**—that told you to make a proposal and a counter-proposal.

**Mr. Michael Killeavy:** The OPA was negotiating with TransCanada. We made the proposal at the end of March. The subsequent one to that was the one that we were instructed to put to—

**Mr. Victor Fedeli:** So you made the March proposal of around \$600 million—

**Mr. Michael Killeavy:** That's right.

**Mr. Victor Fedeli:** And JoAnne Butler told you that OPA was instructed by Craig MacLennan to make the \$712 million—or the counter-proposal.

**Mr. Michael Killeavy:** That's what she told me, yes.

**Mr. Victor Fedeli:** Okay. Would it surprise you, then, if I read you sworn testimony from Craig MacLennan—when I asked him, "Were you aware of the \$712-million offer that was made to TransCanada that they eventually rejected?", his answer was, "I couldn't recall it." Would that surprise you? Your eyes—you've raised your eyebrows on that one.

**Mr. Michael Killeavy:** Yes, I'd be surprised.

**Mr. Victor Fedeli:** When I said, "When the decision to move from Oakville to the new Lennox site—you say you don't know about the \$712 million ... you do recall reading about that number." And he said: "More recently ... yes." He was talking about reading it in the Globe and Mail. I said, "We know that TransCanada turned down \$712 million," and Craig MacLennan, under oath, said that he had been screened off the file, so that he could



only talk about numbers from back then, before he was screened off.

Do you recall the last time he was involved in negotiations?

**Mr. Michael Killeavy:** I don't recall the date, no.

**Mr. Victor Fedeli:** You don't recall the date? That's fair. Would it surprise you, in his sworn testimony, that he said he wasn't part of the negotiations?

**Mr. Michael Killeavy:** For which file? Which one? Greenfield or TransCanada?

**Mr. Victor Fedeli:** Now I actually have to look that up. I had asked him if he was involved in the \$1.4-billion number, so I'm guessing that's the Oakville one.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** He said that no, he wasn't. I reminded him that his name is on one of the documents. And then, when I said, "Your name's on a document, so I'm sure you now will recall the document," he said, "Yes, I now recall that document." So I guess this is the Oakville one.

**Mr. Michael Killeavy:** Right.

**Mr. Victor Fedeli:** So would you consider him part of the negotiations in any aspect of Oakville?

**Mr. Michael Killeavy:** He wasn't part of the OPA negotiating team with—

**Mr. Victor Fedeli:** No, I understand that.

**Mr. Michael Killeavy:** Again, my understanding from talking to JoAnne is that he did have some involvement. I don't know the extent of the involvement, though.

**Mr. Victor Fedeli:** We'll have to check back with her. That'll be a good question for her on a follow-up. I think your raised eyebrows pretty much answered the question for me.

I'm back to that \$712 million still. You don't need to refer to it. But I would ask you, why did you make that second counter-proposal in April of \$712 million?

**Mr. Michael Killeavy:** As I was explaining to Mr. Tabuns, TransCanada had made a settlement proposal to us in early March 2011. We rejected it and we made a counter-proposal towards the end of March. My understanding, then, was that TransCanada was very upset, that they didn't think that our counter-proposal had sufficient financial value for them, and they went and they complained to the government.

**Mr. Victor Fedeli:** I'm sorry; after proposal 1, TransCanada went and complained to the government?

**Mr. Michael Killeavy:** In early March, they made a proposal to us. We rejected it. We made a counter-proposal to them—

**Mr. Victor Fedeli:** Yes, \$600 million.

**Mr. Michael Killeavy:** Yes. They did not like that counter-proposal. My understanding, again, talking with JoAnne and Colin Andersen, is that they went to the government and they complained about it.

**Mr. Victor Fedeli:** So are you testifying that the government then instructed you to make a higher bid or a different proposal?

**Mr. Michael Killeavy:** Again, talking to JoAnne Butler, it was my understanding that Craig MacLennan had instructed us to make, in effect, a richer—

**Mr. Victor Fedeli:** A richer settlement, which is why you made the \$712-million offer?

**Mr. Michael Killeavy:** Yes, a proposal.

**Mr. Victor Fedeli:** A proposal? And it was subsequently rejected as well?

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Did she say anybody else had directed her, from the government, other than Craig MacLennan?

**Mr. Michael Killeavy:** No.

**Mr. Victor Fedeli:** Why did the OPA board go along with that directive?

**Mr. Michael Killeavy:** I don't know. You'd have to talk to the board.

**Mr. Victor Fedeli:** Oh, you know we will be. Do you understand that there's no legal authority for the government to dictate what the OPA should or could be doing?

**Mr. Michael Killeavy:** Well, there is directive power to enter into procurement contracts under the Electricity Act. Are you talking about cancelling a contract?

**Mr. Victor Fedeli:** I'm talking about cancelling the contract.

**Mr. Michael Killeavy:** That's my understanding.

**Mr. Victor Fedeli:** That they don't have—

**Mr. Michael Killeavy:** They have no legal authority. That's my understanding.

**Mr. Victor Fedeli:** So you don't know yourself why—there was no chit-chat in the building about the fact that the board has approved this?

**Mr. Michael Killeavy:** Not that I'm aware of, no.

**Mr. Victor Fedeli:** Okay. I'm looking at document 4. Mine appear to be a bit out of order, but it's 7/8, I would say.

**Mr. Michael Killeavy:** This is the board of directors?

**Mr. Victor Fedeli:** Yes, you'll see it's PC doc number 4, 7/8. "The Premier's office and the Ministry of Energy had verbally directed the Ontario Power Authority to send another proposal to TransCanada Energy...."

I have to read through a "draft" stamp, so it's kind of hard. It might say something like "in" or "with an effective financial value in the amount of \$712 million on account of all of TransCanada Energy's ... claims," sunk costs etc., etc.

**Mr. Michael Killeavy:** Okay.

**Mr. Victor Fedeli:** So are you familiar—had you ever seen this document before?

**Mr. Michael Killeavy:** These are minutes to—

**Mr. Victor Fedeli:** These are board minutes of the meeting of the board of directors of April 20.

**Mr. Michael Killeavy:** I don't specifically recall seeing them before, no.

**Mr. Victor Fedeli:** Page 6/8—do you go to these board meetings?

**Mr. Michael Killeavy:** Occasionally I would, yes. Whenever there were issues around Greenfield South or

TransCanada or any other contractual-related matters, I would go to the board, yes.

**Mr. Victor Fedeli:** This one might be one you were at—page 6/8. It talks about members of staff in attendance—

**Mr. Michael Killeavy:** Oh, I was there.

**Mr. Victor Fedeli:** —so I'm not really sure if you were there for the whole day, that minute or that hour. They talk a little bit about the meeting and how the meeting was constituted. Then they get into the Oakville generating station.

It says here, "Ms. Butler advised the board ... that representatives of TransCanada ... had recently met with representatives of the office of the Premier ... and ... the Ministry of Energy to express its concerns over the ... proposal...."

Then we get into the counter-proposal and then it says, again, "The Premier's office and the Ministry of Energy ... verbally directed the Ontario Power Authority...."

It goes on, down at the bottom, the second-last paragraph: "Mr. Andersen advised the board members that the Ontario government did not have the legal authority to dictate...."

It goes on to talk about Mr. Hinds summarizing the position of the board members—"ought to ... settle" this—"and the value of the counter-proposal, as instructed by the government of Ontario, of \$712 million." And the board agreed.

Basically, the board takes it on the advice of the vice-president, Ms. Butler, who said, "I have been told by the government to make this \$712-million proposal." Is that how this would have happened, according to the board minutes?

**Mr. Michael Killeavy:** That's my understanding, based on what it said, yes.

**Mr. Victor Fedeli:** Okay. Mr. Andersen swore under oath—first of all, you have also confirmed that the OPA told the government there were more costs than sunk costs.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** You have said—I think it's in your opening statement; you have also reiterated that. Mr. Andersen—I asked him two questions. One of the questions was, "Who in the government knew?" He said, "Everybody."

Do you agree with Mr. Andersen that all the people in the circle of the government that we're dealing with knew that there were costs above the \$40 million and the \$190 million in sunk costs?

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**Mr. Michael Killeavy:** I have no direct knowledge of that, but that's what I've been told.

**Mr. Victor Fedeli:** So you would believe that they'd know \$40 million wasn't it?

**Mr. Michael Killeavy:** I believe that's correct, yes.

**Mr. Victor Fedeli:** And you'd know that \$180 million and then subsequently \$190 million wasn't it?

**Mr. Michael Killeavy:** Wasn't the—

**Mr. Victor Fedeli:** Wasn't the final number.

**Mr. Michael Killeavy:** That's right, yes. The \$180 million was always the costs that were going to be—

**Mr. Victor Fedeli:** Yes, until they topped up the \$10 million of 15—as the story goes.

Mr. Delaney said to you, were the numbers being used by the government provided by the OPA, and you said yes. I'd also ask you then, would the numbers not being used by the government also have been provided by the OPA? That's the addition to the \$40 million and the addition to the \$190 million?

**Mr. Michael Killeavy:** I'm sorry. I'm not following the question.

**Mr. Victor Fedeli:** Mr. Delaney asked you a question: Were the numbers being used by the government provided by the OPA? And you said yes, they were.

**Mr. Michael Killeavy:** They were.

**Mr. Victor Fedeli:** That's the \$40 million and the \$190 million. I'm talking to anything above \$40 million and anything above \$190 million. I ask you a similar question—half tongue in cheek, by the way—were the numbers not being used by the government also provided by the OPA? The fact that there's more than \$40 million.

**Mr. Michael Killeavy:** I don't know.

**Mr. Victor Fedeli:** There were more costs than \$40-million costs? There were more costs in addition to the \$40 million?

**Mr. Michael Killeavy:** There would be site-related costs and system-related costs, yes.

**Mr. Victor Fedeli:** Okay. And you would have given that information to the government?

**Mr. Michael Killeavy:** I would have given the information to Joanne Butler and Colin Andersen. I presume they would have passed it on to the government.

**Mr. Victor Fedeli:** Okay. I want to go on to Mississauga on what you'll find—I think we can jump over document 5 because you covered that plenty of times. We can go into document 6.

There was an option presented in document 6, a "directed dispatch" option. Do you know what is being referred to by that?

**Mr. Michael Killeavy:** Oh, yes. Very early on—this is Greenfield South. Very early on—

**Mr. Victor Fedeli:** We're now on Mississauga.

**Mr. Michael Killeavy:** Yes. Very early on, we were exploring some options for what we could possibly do with the plant, and I believe I had the idea of letting them finish construction of the plant and then just directing them not to operate it because it will—

**Mr. Victor Fedeli:** Okay. So why were you looking at options? Who would have directed you to look at options for Mississauga?

**Mr. Michael Killeavy:** It probably would have been JoAnne Butler and Colin Andersen.

**Mr. Victor Fedeli:** In document 7, the next one from JoAnne Butler to you, Michael, she says, "My nausea just got worse ... see you in a little bit." What happened that day on Tuesday, November 15?

**Mr. Michael Killeavy:** Sorry. The thing is—it's stapled upside—



**Mr. Victor Fedeli:** That's okay. Document 7, "My nausea just got worse ... see you in a little bit." What would have happened? There was a conversation between Greg Vogt and Colin Andersen. What would have happened there?

**Mr. Michael Killeavy:** I don't know.

**Mr. Victor Fedeli:** In the next email, a little later in the afternoon, where your advice from Jesse Kulendran—she's giving you advice, Jesse Kulendran?

**Mr. Michael Killeavy:** Who?

**Mr. Victor Fedeli:** Kristin Jenkins is writing to Jesse Kulendran and copying you.

**Mr. Michael Killeavy:** Oh, okay.

**Mr. Victor Fedeli:** "—based on legal advice, 'terminated' has been changed to 'is not proceeding.'" Did something happen in the contract that went from termination—

**Mr. Michael Killeavy:** I think that it was probably some sort of a press document where they were saying that the OPA was terminating the contract, but there is actually no right to terminate the contract.

**Mr. Victor Fedeli:** Why do you say there's no right to terminate the contract?

**Mr. Michael Killeavy:** There's only rights to terminate the contract under certain conditions.

**Mr. Victor Fedeli:** Like force majeure?

**Mr. Michael Killeavy:** Well, typically, it would be like a supplier admitted fault. They breached an obligation, have incurred it, and that had not happened.

**Mr. Victor Fedeli:** Okay. So this is November 15. Now, I don't meant to embarrass you. You have colourful language in your emails.

**Mr. Michael Killeavy:** Sorry, which one?

**Mr. Victor Fedeli:** Document 9. Now, I won't repeat your language and I know you won't either.

**Mr. Michael Killeavy:** It's very unparliamentary, I understand.

**Mr. Victor Fedeli:** It's okay that it's unparliamentary, but there's a problem somewhere.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Somebody kind of took care of your "entire something weekend."

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Because "the something MOF will not pay him \$15m."

**Mr. Michael Killeavy:** Right.

**Mr. Victor Fedeli:** Tell us about the \$15 million. And I don't mean to be colourful in there, but it was just kind of fun to see that in your email.

**Mr. Michael Killeavy:** I think it's just a sign of how frustrating it was at that point in time—

**Mr. Victor Fedeli:** I can imagine that this is frustrating. So somebody expected the Ministry of Finance to pay Eastern—Keele Valley \$15 million?

**Mr. Michael Killeavy:** What had happened is when I first met with Greg Vogt on the site—

**Mr. Victor Fedeli:** You have about two minutes.

**Mr. Michael Killeavy:** —he was insisting that in order to begin talks to permanently cease construction, he wanted his lawsuit at Keele Valley settled.

**Mr. Victor Fedeli:** Okay. So we're back to that.

**Mr. Michael Killeavy:** He was claiming \$20 million. We were eventually able to negotiate him down to \$15.4 million.

**Mr. Victor Fedeli:** We understand the \$15.4 million—"the so-and-so MOF will not pay him \$15m," and they never did.

**Mr. Michael Killeavy:** That's right.

**Mr. Victor Fedeli:** They ended up coming up with \$10 million.

**Mr. Michael Killeavy:** Correct.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** This side deal for \$5.4 million, are you aware of that?

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Were you aware that those were additional costs to the government above and beyond the \$180 million, which then turned into \$190 million—\$10 million from this made it \$190 million.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Were you aware, then, that there was still that additional \$5.4 million owed to him?

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Would the government have been aware of that?

**Mr. Michael Killeavy:** I don't know.

**Mr. Victor Fedeli:** Okay. Our emails from Rocco Sebastiano and others show, of course, that they were imminently aware of that extra \$5.4 million at the time they said, "This is it: \$190 million."

In addition to the \$5.4 million that we've proved, you knew that there were still other monies above and beyond the \$190 million—above and beyond this \$5.4 million?

**Mr. Michael Killeavy:** Again, are talking about payable to Eastern Power or associated with relocation of the project?

**Mr. Victor Fedeli:** Somebody had to write a cheque to somebody—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

**Mr. Victor Fedeli:** I'll pick it up.

**The Chair (Mr. Shafiq Qaadri):** To the NDP side, Mr. Tabuns.

**Mr. Peter Tabuns:** I'm just going to go back to the work that you did on the memorandum of understanding with TransCanada Enterprises. You would have been asked to look at various elements of that memorandum of understanding, and if I understand correctly, you acted as a resource to do number crunching so you could tell people the range of costs. Is that correct?

**Mr. Michael Killeavy:** There were other people involved besides me, but I was one of the people, yes.

**Mr. Peter Tabuns:** You were one of them.

**Mr. Michael Killeavy:** Mm-hmm.

**Mr. Peter Tabuns:** So you would have looked at the cost for gas delivery and management, which was one of the—

**Mr. Michael Killeavy:** Actually, there was someone else in our clean energy procurement section who had that expertise, so that person looked at it.

**Mr. Peter Tabuns:** And they did do a calculation, to your knowledge?

**Mr. Michael Killeavy:** It was a very rough calculation, yes.

**Mr. Peter Tabuns:** And the capital costs for gas hookup?

**Mr. Michael Killeavy:** Again, a similar-type estimate, yes.

**Mr. Peter Tabuns:** And connection costs?

**Mr. Michael Killeavy:** I don't know; I'm not sure.

**Mr. Peter Tabuns:** And line losses?

**Mr. Michael Killeavy:** That would have come later.

**Mr. Peter Tabuns:** That would have come later.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** In the team that was working on the memorandum of understanding—

**Mr. Michael Killeavy:** Yes?

**Mr. Peter Tabuns:** —there was knowledge of the sunk costs—the \$40-million figure we've all been using—and knowledge of ranges for a variety of other costs as well.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** And there's no reason those costs would not have been shared with the government at the time.

**Mr. Michael Killeavy:** I don't know of any reason why they wouldn't be, but I don't know if they were or not. I don't know.

**Mr. Peter Tabuns:** Okay. We've been, as you're well aware, going through this ongoing issue of when the government knew that \$40 million was a minimal part of the cost and not the maximum cost. What you and others have indicated is that there was clear awareness that there were a variety of costs; \$40 million wasn't the end of the cost when we signed off on the memorandum.

**Mr. Michael Killeavy:** Correct.

**Mr. Peter Tabuns:** On another matter, and it's document 9 in the NDP bundle, you wrote to Susan Kennedy, JoAnne Butler and Michael Lyle.

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** You write, "Could we put an 'out' option ... that states that if we can't negotiate an agreement with TCE that is in the best interests of the ratepayer, we don't need to conclude an agreement at any cost?" Can you explain?

**Mr. Michael Killeavy:** I was concerned at the time that, if we had received a directive that basically said, "Negotiate a contract with TransCanada Energy," that would basically give them quite a lot of leverage because my hands would be tied. I would have to negotiate a contract, and it could potentially be a very expensive contract. So what I had asked for in the directive is that, basically, there be some sort of option whereby if we

didn't think it was in the best interest of the ratepayer to proceed with a contract, that we wouldn't have to actually negotiate that contract.

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**Mr. Peter Tabuns:** And what was the outcome of that?

**Mr. Michael Killeavy:** I believe we did actually insert the out clause into the directive, but the directive was never issued.

**Mr. Peter Tabuns:** Okay. And just going back—I should have followed up. Those other buckets of costs—do you have knowledge of those numbers for the gas delivery and management, the capital costs for hookup and connection costs?

**Mr. Michael Killeavy:** We have estimates at this point in time.

**Mr. Peter Tabuns:** Do you have them available to you, personally, right now?

**Mr. Michael Killeavy:** If you go to the \$310-million cost estimate, they'd be in there. They'd be line items in there.

**Mr. Peter Tabuns:** At the time that you did these rough estimates, when the memorandum of understanding was done, do you have recollection of the range of costs that were identified at that point?

**Mr. Michael Killeavy:** I don't.

**Mr. Peter Tabuns:** Okay. Were you involved in the Ontario Power Authority's response to the Auditor General on the Mississauga plant?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** Had you done a calculation prior to the Auditor General's work on the full cost of the Mississauga cancellation and relocation?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** And were those assessments made available to the ministry, if they were interested in them?

**Mr. Michael Killeavy:** I believe they were.

**Mr. Peter Tabuns:** You believe they were?

**Mr. Michael Killeavy:** I believe they were.

**Mr. Peter Tabuns:** Okay. The Mississauga plant: The initial contract was signed in 2004.

**Mr. Michael Killeavy:** Correct.

**Mr. Peter Tabuns:** No construction started until 2011. When I looked at the Oakville contract, there was a provision that after a certain length of time with non-performance, the contract could be considered void. Was there any similar provision in the Mississauga contract?

**Mr. Michael Killeavy:** I believe there was, yes.

**Mr. Peter Tabuns:** Why was it not exercised?

**Mr. Michael Killeavy:** Are you talking about termination after an event of force majeure?

**Mr. Peter Tabuns:** Yes, and after an extended period of non-performance.

**Mr. Michael Killeavy:** Yes. It's really tied to pushing the milestone date for commercial operation out—I believe it's more than 24 months—and that had not yet occurred. So the right actually wasn't triggered.

**Mr. Peter Tabuns:** So what was the commercial operation date supposed to be?



**Mr. Michael Killeavy:** I believe the commercial operation date was July 2014.

**Mr. Peter Tabuns:** So why did the Ontario Power Authority renegotiate the contract in 2009 with Eastern Power?

**Mr. Michael Killeavy:** That predated my joining the OPA by several months, but I understand that at the point in time they had actually experienced a number of delays in permitting. Costs had gone up, and they were able to make a successful argument that they should be compensated for the increased costs.

**Mr. Peter Tabuns:** But when they sign those contracts, they assume the risk, do they not?

**Mr. Michael Killeavy:** Yes.

**Mr. Peter Tabuns:** So why did we essentially let them off the hook?

**Mr. Michael Killeavy:** I don't know.

**Mr. Peter Tabuns:** Did you find the fact that they had difficulty getting financing unusual?

**Mr. Michael Killeavy:** I only found that out after the fact. I did find it a little bit unusual, yes.

**Mr. Peter Tabuns:** Did many other projects have trouble getting financing?

**Mr. Michael Killeavy:** It happens from time to time.

**Mr. Peter Tabuns:** What's the average cost of financing for these power plants?

**Mr. Michael Killeavy:** I don't know. We don't really get involved in the financing aspect of it. We don't vet the financing; we don't preapprove the financing. So we really wouldn't have any knowledge of that.

**Mr. Peter Tabuns:** But when someone presents a request or a proposal, surely they show that they can get financed.

**Mr. Michael Killeavy:** They demonstrate their ability to get financing, but they don't actually have to disclose the costs of financing.

**Mr. Peter Tabuns:** So that's entirely up to them. You don't do an assessment as to whether or not this is a viable business deal.

**Mr. Michael Killeavy:** That's right.

**Mr. Peter Tabuns:** Why on earth would you commit Ontario's power supply to companies that may not be viable?

**Mr. Michael Killeavy:** Well, the model that we use is that we rely on private sector partners to design, develop, arrange the financing and construct and operate the facilities.

**Mr. Peter Tabuns:** And if they don't?

**Mr. Michael Killeavy:** We do have completion and performance security in the contract, which is forfeit if they don't fulfill their contractual obligations.

**Mr. Peter Tabuns:** One of the things I found unusual in the Auditor General's report was that this company was paying 60% interest per annum—

**Mr. Michael Killeavy:** Sixty per cent?

**Mr. Peter Tabuns:** Yes.

**Mr. Michael Killeavy:** No, they weren't paying 60%. It's 14% compounded quarterly. I think it worked out to be about 14.7% compounded annually.

**Mr. Peter Tabuns:** The Auditor General says that the OPA asked two law firms to review the deal, and he reports, "Both felt there was a good chance a court would opt to set the award at a 60% interest rate on the actual amount of \$59 million drawn for the six-month period."

**Mr. Michael Killeavy:** That was in relation to the cancellation of the credit agreement with EIG, the lender in the United States. They had demanded \$60 million, which was the drawn principal, which we always said we would pay. On top of that, in November 2011, they had demanded a yield maintenance amount, which is effectively a break fee for breaking the contract, of \$168 million, which would certainly be above the criminal rate of interest in Canada of 60%. That related specifically to the cancellation of the credit agreement; it wasn't the annual interest rate.

**Mr. Peter Tabuns:** I'll take your word for it. I read it differently, but I'll take your word for it.

Don't you find, though, that even at 14%, that's way outside what people were borrowing at?

**Mr. Michael Killeavy:** At that time, yes.

**Mr. Peter Tabuns:** Didn't that indicate to you that there were substantial problems with this corporation?

**Mr. Michael Killeavy:** You pay more for financing if the lenders think that you've got a riskier project, typically.

**Mr. Peter Tabuns:** This would have been a very risky project, in fact.

**Mr. Michael Killeavy:** Typically, financing for projects—my understanding is 6% or 7%. It's quite a bit higher.

**Mr. Peter Tabuns:** Did you know, prior to the government saying that the cost—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Just a few things to clarify, Mr. Killeavy. A few times you've said that you're not a lawyer. Is that correct?

**Mr. Michael Killeavy:** That's right.

**Mr. Bob Delaney:** Why is there LLB behind your name?

**Mr. Michael Killeavy:** I have a law degree, but I'm not a member of the bar.

**Mr. Bob Delaney:** That's what I wanted to know. In other words, you have a law degree, but you're not practising law.

**Mr. Michael Killeavy:** That's right.

**Mr. Bob Delaney:** When you were talking with Mr. Fedeli, you were talking a little bit about this \$712-million offer. What year was this discussed?

**Mr. Michael Killeavy:** Pardon me?

**Mr. Bob Delaney:** What year was this discussed?

**Mr. Michael Killeavy:** It would have been April 2011, I believe.

**Mr. Bob Delaney:** Okay. Mr. MacLennan wrote to Colin Andersen on July 13, 2012, a year and a bit later, and he says—and I'll read his email. It says:

"Hi Colin,

“As discussed previously we were relying on the OPA to provide the accurate and complete calculations of relocation costs....

“Can you pls confirm and double-check the calculation to ensure that [the] 180 remains accurate.”

Colin Andersen replied, “The OPA stands by the \$180M figure.”

Does that mean that the province relied on the OPA for this number?

**Mr. Michael Killeavy:** The \$180 million was the cost of what was not going to be repurposed. I guess they would have, yes.

**Mr. Bob Delaney:** Okay. Mr. MacLennan then said that he wasn’t aware of the value of the offer. What was that \$712 million for, anyway?

**Mr. Michael Killeavy:** Sorry, what are we talking—we’re talking about the second—

**Mr. Bob Delaney:** Yes, I’m just trying to sort out what this \$712 million was all about.

**Mr. Michael Killeavy:** I’d have to go back to the chart and refresh my memory, but it would have included payments for sunk costs, payments for foregone profits—let’s see if I can find it here; I’m trying to find that chart. Payments for the gas turbines, that sort of thing would have been built into that second counter-proposal.

**Mr. Bob Delaney:** So that’s kind of like apples and oranges when discussing it in relation to that \$180-million or \$190-million figure, isn’t that correct?

**Mr. Michael Killeavy:** Yes. The \$712 million is basically—it would be a proxy for the damages that they would be owed for the breach of the contract. The idea back in the spring of 2011 was to find them a replacement project that would provide them with the financial value of the Oakville project.

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**Mr. Bob Delaney:** Oh, okay.

**Mr. Michael Killeavy:** So it’s not a relocation cost; it’s completely separate.

**Mr. Bob Delaney:** Oh, I see. In other words, that would have included the value of a new power plant. It wasn’t an offer to write a cheque for \$712 million.

**Mr. Michael Killeavy:** That’s right. It would be to find a replacement project that would be worth that value.

**Mr. Bob Delaney:** Okay. All right. So perhaps the reason that Mr. MacLennan wouldn’t have been familiar with it is because it wasn’t a cash-value offer. It wasn’t what he was in there talking about; correct?

**Mr. Michael Killeavy:** It was never, “Write them a cheque for \$712 million.” It was, “Find them a project.”

**Mr. Bob Delaney:** Tremendous. Thank you.

There have been some suggestions, I think, that the Premier’s office staff were negotiating with the company.

Chair, just to put it on the record: Jamison Steeve, formerly of the Premier’s office, said, “My discussions with TransCanada were exploratory in nature....”

Sean Mullin, who also worked in the Premier’s office, said, “We were not authorized to ... and we did not engage in” any negotiation.

From TransCanada Energy, Chris Breen said they were “certainly not negotiating in the sense of fine-detail dollars and cents,” so, very clearly, no offers were made and no deals were reached during these meetings.

David Lindsay, the former Deputy Minister of Energy, said, “I don’t think they actually had a deal. If they had a deal, why were we going through all this process?”

Chair, on that note, I think we have pretty much covered our agenda, and we’re finished.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli?

**Mr. Victor Fedeli:** In document 6 from the NDP, there’s a Day-timer from August 22, 2012. It says, “re Debrief”—it’s at 2:30 in the afternoon with CA, KJ, ML—I presume you’re ML—and ZM—

**Mr. Michael Killeavy:** No, that’s Michael Lyle.

**Mr. Victor Fedeli:** That’s Michael Lyle?

*Interjection.*

**Mr. Victor Fedeli:** Oh, that’s that Michael.

**Mr. Michael Killeavy:** I’m MK.

**Mr. Victor Fedeli:** Oh, you’re MK. Where are you in here?

*Interjection.*

**Mr. Victor Fedeli:** Okay.

My question on this is, you’ve heard from Mr. Delaney, and you’ve also likely heard from other witnesses, that there was a document dump—the first set of 36,000 documents.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** We have learned from sworn testimony that about 4,000 documents were purposely pulled out, but subsequently put in a second document dump of 20,000. Both Kristin Jenkins and Michael Lyle have sworn under oath here that they were instructed to take those documents out. Do you know anything whatsoever about the removal and subsequent replacement, two weeks later, of documents?

**Mr. Michael Killeavy:** No, I wasn’t involved in document disclosure at all.

**Mr. Victor Fedeli:** Okay. So in our number 12, right at the end—it’s a freedom-of-information request, and you’re involved in the freedom of information.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Is that something you would generally have done?

**Mr. Michael Killeavy:** I would be involved in the sense that I would be somebody who may have documents that are related to the search, so they would ask me, “Produce what documents you have, or show me where they are stored on the network drive”—that type of thing.

**Mr. Victor Fedeli:** Okay. So in this particular case of the documents, there’s no reason to continue to ask you what you knew about the removal of 4,000 documents and their subsequent replacement?

**Mr. Michael Killeavy:** I’m sorry; I can’t help you. I wasn’t involved in that process.



**Mr. Victor Fedeli:** That's fair, Michael. That's quite fair.

I want to just quickly talk about where we left off, the \$15.4 million. We heard the number was \$180 million—"That's it; you're not going to hear any more"—and a week later, they added \$10 million. We know that \$10 million was part of the \$15.4 million.

There's an email, document 10, from you to Kevin Dick and JoAnne Butler; you're chatting a little bit about this \$5.4 million. It was decided to pay the \$5.4 million through a NUG contract.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** So they were asked—or you were asked, I guess—"Is the NUG needed?" and your answer—somebody's answer—in another email is, "No, we don't need the NUG," but you decided to hold your nose and manage it for four years.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Is that generally what you can say about that \$5.4 million: that it was a side deal paid for power—that never did come, by the way—that was viewed not to be needed?

**Mr. Michael Killeavy:** That's right. The context was that they were not going to engage in discussions that would permanently stop work unless they got the full—

**Mr. Victor Fedeli:** Unless you gave them that side deal, the \$15.4 million. The government didn't want us to know it was \$15.4 million, so they made it \$10 million and then made you do a side deal for \$5.4 million—we've had sworn testimony—so that it doesn't show up on the books.

**Mr. Michael Killeavy:** Actually, I think the primary concern that I had with it being made public was that we were in negotiations with other contract counter-parties at the same time. If it became widely known that we were settling the OEFC's lawsuits for them, I was afraid the floodgates might open, and we might have to settle a whole bunch more lawsuits.

**Mr. Victor Fedeli:** So done as a side deal for \$5.4 million—I've got to tell you, I asked about that side deal in the Legislature day after day, week after week. Nobody ever admitted to me that it was indeed a side deal until we heard from the auditor.

You've also said that you talked to the government about more than the sunk costs. Did you make it clear to the government, or did the OPA make it absolutely clear to the government, that there are or were more costs than just the sunk costs?

**Mr. Michael Killeavy:** Again, I don't deal that much directly with the government, but it is my understanding, if you're talking with people like JoAnne Butler and Colin Andersen they—

**Mr. Victor Fedeli:** So when did you know, Michael, that there were additional costs to both the \$40 million and the \$190 million?

**Mr. Michael Killeavy:** I think we probably all knew at the time that the deals were cut that there would have been additional costs. We just didn't know what the

value would be. We just hadn't done enough analysis to determine them.

**Mr. Victor Fedeli:** So you would never have said, "It's \$40 million total. That's it. There's no more costs," or "\$190 million total; it's never going to be a penny more"?

**Mr. Michael Killeavy:** I would never have said that, no.

**Mr. Victor Fedeli:** You would never have said that. If you were asked, "Are there any penalties attached to that \$190 million?" you would not have said no?

**Mr. Michael Killeavy:** Penalties attached to it?

**Mr. Victor Fedeli:** We're talking about the \$150 million paid out, the termination penalty to—

**Mr. Michael Killeavy:** EIG?

**Mr. Victor Fedeli:** Yes, the EIG.

**Mr. Michael Killeavy:** I lost your question; I'm sorry.

**Mr. Victor Fedeli:** You would never have said to somebody: "There's no additional costs. There's no penalties. There's no other costs coming. There's no other charges coming. This is it; it's \$190 million"?

**Mr. Michael Killeavy:** I don't believe so.

**Mr. Victor Fedeli:** Okay. When you were negotiating that MOU—

**Mr. Michael Killeavy:** Well, I was supporting the negotiations.

**Mr. Victor Fedeli:** So who was around the table from your side? I think we had sworn testimony that there was—the ministry, it said here, and maybe Infrastructure Ontario. I forgot whose sworn testimony that was.

**Mr. Michael Killeavy:** Yes. I was actually sitting in my office while they were doing the negotiations.

**Mr. Victor Fedeli:** So who would have been there? Andersen, Butler and Lyle from the OPA?

**Mr. Michael Killeavy:** And my colleague Darryl Yahoda, director of clean energy.

**Mr. Victor Fedeli:** What's his name?

**Mr. Michael Killeavy:** Darryl Yahoda.

**Mr. Victor Fedeli:** Darryl Yahoda.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** Okay. And who from the ministry would have been there?

**Mr. Michael Killeavy:** There was an assistant deputy minister by the name of—I believe his name was Michael Reid.

**Mr. Victor Fedeli:** Yes, we have that. Halyna Perun?

**Mr. Michael Killeavy:** Halyna Perun, I believe, was there as well, yes.

**Mr. Victor Fedeli:** Anybody else from the ministry?

**Mr. Michael Killeavy:** Not that I'm aware of, no.

**Mr. Victor Fedeli:** And was Infrastructure Ontario there?

**Mr. Michael Killeavy:** I believe so. It would have been Jonathan Weisstub and Bert Clark, I believe.

**Mr. Victor Fedeli:** Jonathan Weisstub and Clark—

**Mr. Michael Killeavy:** Bert Clark, the new CEO of Infrastructure Ontario.

**Mr. Victor Fedeli:** Bert Clark. Okay.

**Mr. Michael Killeavy:** I believe he was there as well.



**Mr. Victor Fedeli:** Okay. This is sort of the rapid round here, just tying up some loose ends.

Do you believe that these cancellations were due because there were changes in the power demand in Ontario? Or do you think, as the Premier has sworn under testimony, that they were politically motivated?

**Mr. Michael Killeavy:** I believe they were political decisions.

**Mr. Victor Fedeli:** When the government announced the cost of cancelling the plant at Mississauga, we've heard sworn testimony from the Auditor General, who said the OPA had already spent \$245 million at that point. It was around July—was it July 2012?

**Mr. Michael Killeavy:** That's correct, July 2012.

**Mr. Victor Fedeli:** The OPA would have already spent \$245 million. Would anybody outside of the OPA be aware that that settlement was made and that that cheque was written or that there were cheques written?

**Mr. Michael Killeavy:** I don't know.

**Mr. Victor Fedeli:** You don't know that? Okay. The \$125-million break fee—there are cabinet documents that talk about a \$125-million break fee—I think it's "break-up fee." It was \$40 million in sunk costs but \$125-million—basically a penalty for TransCanada. Are you familiar with that?

**Mr. Michael Killeavy:** No. Sorry, I'm not.

**Mr. Victor Fedeli:** You're not familiar with that number? Okay—

**Mr. Michael Killeavy:** The \$40 million in sunk costs, I am, but not the \$125-million break fee.

**Mr. Victor Fedeli:** Not the \$125 million.

**Mr. Michael Killeavy:** No, I'm not.

**Mr. Victor Fedeli:** So you would not have seen any cabinet documents that we received recently that said there was a \$125-million break fee; that if the deal didn't go through by December, they get \$125 million?

**Mr. Michael Killeavy:** I wasn't aware of that, no.

**Mr. Victor Fedeli:** You're not aware of that deal that was arranged with TransCanada?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Michael Killeavy:** I'm only aware of the \$40-million sunk costs figure.

**Mr. Victor Fedeli:** Okay. The difference between the ratepayer and the taxpayer: When I asked that question of David Lindsay—like, you raised your eyebrows; he sunk his head. Because the \$40-million sunk costs was payable by the taxpayer. The rest, the unknown number yet in Oakville, will be payable through OPA, we presume, by the ratepayer.

**Mr. Michael Killeavy:** Yes, correct.

**Mr. Victor Fedeli:** The Mississauga \$190 million is paid by the taxpayer.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** The remainder is now paid by the ratepayer.

**Mr. Michael Killeavy:** Yes.

**Mr. Victor Fedeli:** There are some documents—they're too detailed to go into, to be quite frank—that talk about the ultimate cost to the ratepayer—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, and thanks to you, Mr. Killeavy, for your presence and your testimony. You're respectfully dismissed.

Gentlemen and ladies, we will take a five- to 10-minute recess.

*The committee recessed from 1632 to 1643.*

MS. REBECCA MacKENZIE

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. Committee is back in session. I would welcome our next presenter, Rebecca MacKenzie, chief of staff, government House leader. I invite you to be affirmed, Ms. MacKenzie.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Rebecca MacKenzie:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacKenzie. Your five-minute opening address begins now.

**Ms. Rebecca MacKenzie:** Thank you, Chair, committee members. Good afternoon. My name is Rebecca MacKenzie and I am currently the chief of staff to the government House leader.

I thought it would be helpful to this committee to provide a brief history of my employment at Queen's Park and a quick outline of my roles and responsibilities.

I started at Queen's Park in September 2010 as a senior communications assistant to the Minister of Community and Social Services. I held the same position beginning in October 2011 for the Minister of Community Safety and Correctional Services. In both ministries, I was responsible for day-to-day interaction with the media and coordinating messaging. I edited and approved ministry communications projects like Web copy, bulletins and communications plans. I also drafted speeches, press releases, letters to the editor, statements and other communications materials.

In February 2012, I had the privilege of joining the Premier's office as special assistant, issues management. I continued in that role until October 22, 2012, when I was promoted to the position of manager of issues management.

For a brief period in the fall of 2012, I spent time at the Ministry of Energy. I will discuss this period in more detail in a moment.

The issues management office breaks down responsibilities by ministry file. During my tenure in that office, I held, at various times, the health, education, labour, government services, consumer services, community safety and correctional services, Attorney General, community and social services—bear with me—children and youth services, northern development and mines, natural resources, municipal affairs and housing, and the transportation-infrastructure files. At no point did I have responsibility for the energy file.



In both positions, I was involved in daily question period briefings with the Premier. This involved identifying issues arising from daily media stories and preparing notes for the Premier for question period.

I also supervised the work of the legislative assistants in the various ministries I was responsible for, and regularly attended planning and communications rollout meetings with those ministries.

At the beginning of December 2012, I took an unpaid leave of absence to work on Sandra Pupatello's leadership campaign as her director of communications.

I was hired to my current position on March 4 of this year.

I believe that I have been called to committee to discuss my responsibilities for my brief tenure at the Ministry of Energy last fall. From September 24 to October 5, I provided communications support to the minister's office. During this period, the minister's office was very busy and also understaffed. There were two reasons for this. It was obviously a very busy time given the volume of documents released and the media interest in them. And number two, the minister's office had had a number of staff members move on to other opportunities, both in government and outside, and had not yet filled those positions.

The Premier's office had flagged that they were short-staffed during such a busy time and particularly needed help with communications functions. I was asked to assist.

The work that I did while at the Ministry of Energy was virtually identical to the work I conducted while at the Ministries of Community and Social Services and Community Safety and Correctional Services. I worked on a number of different communications materials. For example, I can recall working on a speech that then-Minister Bentley was presenting to German solar power stakeholders, a Ministry of Energy press release on solar power, a communications project that was being sent out with energy bills, and some ministry Web copy.

The only involvement I had with any materials related to the cancellation of the Mississauga and Oakville gas plants was to review and edit the questions and answers and key messages that went out to caucus after the documents were released.

With that, I'm pleased to answer any questions that the committee may have.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacKenzie.

Beginning with the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Ms. MacKenzie. Thank you for being here. May I call you Rebecca?

**Ms. Rebecca MacKenzie:** Absolutely.

**Mr. Victor Fedeli:** Thank you.

You spoke quickly and I missed a couple of notes. September 24 to October 5, you were doing communications with the Ministry of Energy.

**Ms. Rebecca MacKenzie:** I was.

**Mr. Victor Fedeli:** Where were you seconded from to do that? I missed that.

**Ms. Rebecca MacKenzie:** I was in the Premier's office doing issues management at the time.

**Mr. Victor Fedeli:** From February—

**Ms. Rebecca MacKenzie:** I started in the Premier's office in February 2012.

**Mr. Victor Fedeli:** Yes, until?

**Ms. Rebecca MacKenzie:** Until October—well, I was promoted within the Premier's office on October 22 and I was there until December 4 when I commenced a leave of absence.

**Mr. Victor Fedeli:** December 4 2012.

**Ms. Rebecca MacKenzie:** That's right.

**Mr. Victor Fedeli:** I really appreciate you being here. Thank you very much. It's likely that those two weeks where the September 24 announcements were made—that we'll probably get around to that a little bit more than the other areas.

The estimates committee that Mr. Leone was leading requested the power plant documents in the spring of 2012. Where were you working in the spring of 2012?

**Ms. Rebecca MacKenzie:** In the Premier's office.

**Mr. Victor Fedeli:** And your title at the time?

**Ms. Rebecca MacKenzie:** Special assistant, issues management.

**Mr. Victor Fedeli:** Okay, so you were the issues management person in the Premier's office. Who did you answer to at the time?

**Ms. Rebecca MacKenzie:** My direct supervisor was the manager of issues management. His name was John O'Leary.

**Mr. Victor Fedeli:** John O'Leary. Was he your boss at the time?

**Ms. Rebecca MacKenzie:** Yes, he was.

**Mr. Victor Fedeli:** And who did he answer to?

**Ms. Rebecca MacKenzie:** Because there was a change in chief of staff to the Premier within that period, various people at different points—I don't want to speculate on exactly what the chain of command was.

**Mr. Victor Fedeli:** That's fair.

Who did you work with? Who worked either with you, for you, worked under you?

**Ms. Rebecca MacKenzie:** Within the issues management shop?

**Mr. Victor Fedeli:** Yes.

**Ms. Rebecca MacKenzie:** So it was John and myself, and then a third individual joined our office in the summer of 2012.

**Mr. Victor Fedeli:** And who's that?

**Ms. Rebecca MacKenzie:** Her name is Lauren Ramey.

**Mr. Victor Fedeli:** Lauren?

**Ms. Rebecca MacKenzie:** Yes.

**Mr. Victor Fedeli:** And her last name?

**Ms. Rebecca MacKenzie:** Ramey.

**Mr. Victor Fedeli:** Ramey. Summer of 2012. Okay.

And you don't know who in the Premier's office that your boss answered to.

**Ms. Rebecca MacKenzie:** It would have changed at different points, because there was a structural change. David Livingston had a different structure than the previous chief of staff.

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**Mr. Victor Fedeli:** Did he work for David Livingston at one point in time? Did John O'Leary work for him at one point in time?

**Ms. Rebecca MacKenzie:** I don't believe that was the direction of command, no. There would have been other people in between those two levels.

**Mr. Victor Fedeli:** Okay. In your capacity as issues management in the Premier's office, when did you become aware of Mr. Leone and the estimates committee request for power plant documents? When would that first have come across your desk?

**Ms. Rebecca MacKenzie:** I can't recall the exact date. You know, we have regular meetings with the House leader's office. Someone would have at some point mentioned to me that there was a committee request.

**Mr. Victor Fedeli:** Okay. I'm just going to ask—

**Mr. Rob Leone:** Sorry, I was just going to ask—approximately, do you have a time, or a month maybe?

**Ms. Rebecca MacKenzie:** I recall that the request came in May 2012, I believe, but I can't recall when I was specifically aware of it.

**Mr. Rob Leone:** Do you have an idea of when issues management would have taken this file from, say, the Minister of Energy's office?

**Ms. Rebecca MacKenzie:** As I mentioned in my opening statement, the energy file was not mine. I wouldn't have been immediately alerted or anything like that, because it wasn't my file.

**Mr. Rob Leone:** Would John O'Leary know?

**Ms. Rebecca MacKenzie:** I can't speculate on that.

**Mr. Victor Fedeli:** We're around May 2012 when the estimates committee first began looking for documents. When did this become a bigger issue in the Premier's office?

**Ms. Rebecca MacKenzie:** What do you mean by "a bigger issue"?

**Mr. Victor Fedeli:** I'll try to use parliamentary language here. This is the biggest—I won't say "scandal," Chair. This is the biggest issue—bigger than Ornge, bigger than eHealth. This is a big deal in Ontario today. It became a big deal some time ago. You were the issues manager in the Premier's office. When did this become a major priority in the Premier's office?

**Ms. Rebecca MacKenzie:** That's not entirely correct. I was part of the issues team—

**Mr. Victor Fedeli:** Which part? That it's the biggest—

**Ms. Rebecca MacKenzie:** Again, it wasn't my file. As I stated in my opening statement, the reason we divide files up like that is because there are a lot of issues going on, on any given day, so you don't really have the capacity to work on all of those files at the same time. There just aren't enough hours in the day. So I would not

have been involved in sort of tracking what was going on with that issue.

**Mr. Victor Fedeli:** So there's you, Lauren Ramey and John O'Leary?

**Ms. Rebecca MacKenzie:** At various points over my time in the Premier's office.

**Mr. Victor Fedeli:** So if you weren't involved with the largest issue in provincial politics and in the Premier's office at that time, who would have been, then?

**Ms. Rebecca MacKenzie:** My recollection is that at various times, both John and Lauren had that energy file. There would have—

**Mr. Victor Fedeli:** So it wasn't you; it was them. And that's fair.

**Ms. Rebecca MacKenzie:** It wasn't my file; I had other files. There would have been, of course, other people in the Premier's office who may have had involvement, but I can't speculate on who exactly was involved in any meetings or anything like that with that file. I wasn't present.

**Mr. Victor Fedeli:** So who in the Premier's office would have been tasked with managing the discussion of the document disclosure?

**Ms. Rebecca MacKenzie:** I can't speculate on that, because I wouldn't have been there. I don't want to speculate on a meeting or emails that I was not part of.

**Mr. Victor Fedeli:** Who was the staff lead in the Premier's office on the whole document issue?

**Ms. Rebecca MacKenzie:** I don't recall that there would have been one person responsible for that.

**Mr. Victor Fedeli:** Would there have been a team involved in managing this biggest issue in Ontario history?

**Ms. Rebecca MacKenzie:** I think with anything that comes up in the Premier's office, there are people who are involved on a communications front, on a policy front, but I can't comment specifically on this case.

**Mr. Victor Fedeli:** Did you have anything to do with the documents whatsoever?

**Ms. Rebecca MacKenzie:** As I mentioned in my opening statement, I did do a copy-edit of the questions and answers and key messages that went out to our caucus members after the documents were released. Other than that, no.

**Mr. Victor Fedeli:** So in order to prepare a copy-edit, would you have seen the documents?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** Would you have any idea what was in the documents?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** How do you prepare copy or edit copy then?

**Ms. Rebecca MacKenzie:** Well, the copy was already provided. It was a copy-edit in the true definition of the word—typos, phrasing, that sort of thing.

**Mr. Victor Fedeli:** Who would have written that copy that you edited?

**Ms. Rebecca MacKenzie:** I don't know who the original author would have been. It was given to me by



the director of communications of the Ministry of Energy when I was over at the Ministry of Energy, and I'm not sure who had it before that.

**Mr. Victor Fedeli:** Okay. I'll just turn it over to Rob for a moment.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone.

**Mr. Rob Leone:** So you mean to tell me that issues management didn't have a read of the documents that were disclosed? Is that what you're suggesting?

**Ms. Rebecca MacKenzie:** I'm telling you that I did not read the documents and I was not involved in the document disclosure process.

**Mr. Rob Leone:** Did you say on October 22, you were promoted to issues manager? Is that what you're saying?

**Ms. Rebecca MacKenzie:** That's right.

**Mr. Rob Leone:** Would you have at that time tried to identify the steps which previous issues managers would have taken on this file? You don't start the job of issues management blank; you actually have to know the issues and the history of the issues to understand exactly where we're going—where the government's going to go on these issues. Would that be fair enough to say?

**Ms. Rebecca MacKenzie:** I'm sorry, I don't totally understand what the question is.

**Mr. Rob Leone:** Well, you've been promoted on October 22 to issues manager. You're the issues manager for the Premier's office. To become the issues manager in the Premier's office—obviously, you have some experience with the issues, but you would have to have some idea of the chronology of all the issues that are before the government, this one being, obviously, a major one by October 22.

If that's the case, would you have been briefed on the chronology of this issue, and by whom would you have been briefed?

**Ms. Rebecca MacKenzie:** I think I would have been aware—I am aware now certainly of sort of the timeline of when documents were released. On October 22, the Premier had resigned and the House was prorogued, so I wasn't involved in daily question period briefings with Premier McGuinty. There wasn't as much involvement with the document disclosure process because we weren't briefing him on a daily basis, and we had kind of already gone through that.

**Mr. Rob Leone:** Who did you take over from on the 22nd?

**Ms. Rebecca MacKenzie:** From John O'Leary.

**Mr. Rob Leone:** John O'Leary. Did you and John O'Leary have a conversation about issues management prior to his departure?

**Ms. Rebecca MacKenzie:** Yes, and the whole time we worked together.

**Mr. Rob Leone:** Okay.

**Mr. Victor Fedeli:** I need to go back. There are three people who manage the issues. This is the single largest issue—I will use the word "scandal" this time, Chair—this is the biggest scandal in our lifetime in the province of Ontario's politics, and you didn't know anything about it?

**Ms. Rebecca MacKenzie:** I wasn't involved in document production or disclosure—

**Mr. Victor Fedeli:** No, no, I asked you, did you not know anything about this? There were only three people in your office: you, Lauren Ramey and John O'Leary, and this is the single largest issue, and you're in issues management.

**Ms. Rebecca MacKenzie:** I'm sorry, what did you—

**Mr. Victor Fedeli:** What did you have to do with this issue? How did you manage this issue?

**Ms. Rebecca MacKenzie:** I was not involved in managing that issue. As I said in my opening statement, I had the health file, the education file. Thinking back to the fall of 2012, we were involved in teacher negotiations, in negotiations with the OMA, AMAPCEO, OPSEU. There were other issues that—

**Mr. Victor Fedeli:** Okay, let's jump to the 24th of September to the 5th of October. There is a communications nightmare over at the Ministry of Energy.

**Ms. Rebecca MacKenzie:** Oh, I wouldn't describe it that way.

**Mr. Victor Fedeli:** Oh, I would. This is the time when you were coming out to tell the public a whole bunch of things that aren't true. This is when you come out to tell the public \$40 million, \$180 million, all these numbers. This is when your caucus stood up and, one by one by one, including cabinet members, said, "You have all the documents," when we know that they knew we didn't.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, you're really inching across the unparliamentary line, there.

**Mr. Victor Fedeli:** So what was your role from September 24 to October 5? What would your role have been in terms of communications, considering we know the messages now that were communicated and the validity of them? What was your role in those two weeks?

**Ms. Rebecca MacKenzie:** As I mentioned in my opening statement, if I can recall, they were short both a press secretary and a communications planner. I think they were also short a policy adviser. So it was really assisting with all the other work that that ministry does on a daily basis that they needed a lot of help with. I'm sure you can understand that there were a lot of media calls coming in, questions about—

**Mr. Victor Fedeli:** So what was your role on September 24 to October 5, with respect to the communications that came out of the Ministry of Energy?

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**Ms. Rebecca MacKenzie:** I assisted with press releases that were going out. I assisted with a speech that then-Minister Bentley was delivering. Again, that question and answer and the key messages for caucus, other website copy, communications materials that the ministry was tracking to deal with—

**Mr. Victor Fedeli:** So in Minister Bentley's speech and press release where he said, "You're going to hear a lot of numbers over the next while. There's only one number you need to know, and that's \$40 million, the total cost," would you have been involved in that sentence, that part of it?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** Not that one?

**Ms. Rebecca MacKenzie:** No. I believe I—

**Mr. Victor Fedeli:** But it is a press release, and it is a speech, but you weren't involved. You said you were involved in press releases and speeches, and this one came out during the time you were there. You had nothing to do with that one?

**Ms. Rebecca MacKenzie:** Right. I believe I already mentioned that my only involvement in any communications material related to the cancellation of the Mississauga and Oakville gas plants was that question and answer and those key messages.

**Mr. Victor Fedeli:** The key messages involved \$40 million and involved \$190 million. What was your involvement in those numbers, in promoting those numbers, or verifying those numbers or putting those numbers in a release or in a speech or on the website?

**Ms. Rebecca MacKenzie:** It was just that question and answer and those key messages.

**Mr. Victor Fedeli:** So in that question and answer and key messages, do you remember the \$40 million?

**Ms. Rebecca MacKenzie:** Yes.

**Mr. Victor Fedeli:** Do you now understand or then understand that \$40 million was not the total cost?

**Ms. Rebecca MacKenzie:** I'm sorry; I don't totally understand the question.

**Mr. Victor Fedeli:** Well, it cost a whole lot more than \$40 million to cancel the Oakville power station, yet in the press releases, in those key messages and in those talking points, they stick with \$40 million. Do you know why?

**Ms. Rebecca MacKenzie:** That was the number that we were given at the time, and I don't believe that there is a final number.

**Mr. Victor Fedeli:** Let's switch over to the \$180 million then. Are you familiar with that number?

**Ms. Rebecca MacKenzie:** Yes.

**Mr. Victor Fedeli:** Then, subsequently, \$190 million?

**Ms. Rebecca MacKenzie:** Yes.

**Mr. Victor Fedeli:** And you've now heard that that wasn't the final number either. Why would you have continued to use \$190 million?

**Ms. Rebecca MacKenzie:** At what point?

**Mr. Victor Fedeli:** In any of the discussions or any of the media. Why would you continue to use \$40 million and \$190 million?

**Ms. Rebecca MacKenzie:** I'll go back to what I've said a number of times. I was copy-editing a document. I didn't have a background in the energy file. I was not involved in negotiations.

**Mr. Victor Fedeli:** That's okay, by the way; neither did the person who sited the subsequent plan.

So let me ask you—

**Ms. Rebecca MacKenzie:** Sorry, if I can finish—

**Mr. Victor Fedeli:** Go ahead, finish.

**Ms. Rebecca MacKenzie:** I was performing a communications function, the same way that I did in two previous positions within Queen's Park. It was a task I

was very familiar with, and I copy-edited, probably made some small changes to phrasing. But I was not involved in the policy development or implementation, which was what those key messages and Q&As were talking about.

**Mr. Victor Fedeli:** In the communication from the cabinet ministers and member after member, we heard, "You have all the documents, 36,000." Who would have given you that information?

**Ms. Rebecca MacKenzie:** Sorry. Are we talking about when I was at the Ministry of Energy?

**Mr. Victor Fedeli:** You were there September 24, and on September 25, September 26, dozens of Liberal members stood up and made statements about the energy file.

**Ms. Rebecca MacKenzie:** Right.

**Mr. Victor Fedeli:** Repeatedly.

**Ms. Rebecca MacKenzie:** Mm-hmm.

**Mr. Victor Fedeli:** Who would have given them those talking points, or who would have written the talking points?

**Ms. Rebecca MacKenzie:** I can't speculate on that because I was at the Ministry of Energy at the time, so I wasn't involved in sort of—

**Mr. Victor Fedeli:** These are Ministry of Energy statistics that were being relayed.

**Ms. Rebecca MacKenzie:** They may have been using the Q&As or the key messages that were sent out. I—

**Mr. Victor Fedeli:** Did you write those Q&As and key messages?

**Ms. Rebecca MacKenzie:** I did not.

**Mr. Victor Fedeli:** Did you edit them?

**Ms. Rebecca MacKenzie:** I copy-edited them.

**Mr. Victor Fedeli:** You copy-edited them. When you're in the Premier's office, with the biggest file to hit in your lifetime, you didn't have anything to do with it. When you were at the Ministry of Energy, the two weeks that the file grew from next to nothing to the largest scandal in that ministry—that we're aware of at least—you have nothing to do with it there either?

**Ms. Rebecca MacKenzie:** I did not.

**Mr. Victor Fedeli:** So you're not familiar with the fact that the 36,000 documents that we received were not the total amount of documents, and that only a short time later we received 20,000 more documents?

**Ms. Rebecca MacKenzie:** I am aware of that fact.

**Mr. Victor Fedeli:** Were you aware then when you continued to copy-edit the 36,000 number? Did you know that 36,000 was not a true number?

**Ms. Rebecca MacKenzie:** No, I was not.

**Mr. Victor Fedeli:** I'm sorry?

**Ms. Rebecca MacKenzie:** Sorry; I was not aware that there were additional documents coming.

**Mr. Victor Fedeli:** Okay. You go ahead.

**Mr. Rob Leone:** Sorry, I have the mike on.

Dalton McGuinty stated in his testimony that he asks his staff to make sure that every number that he cites is not only checked but rechecked to verify that it is correct. Would you have been the one tasked, once you were the



director of communications—sorry, with issues management—the one to verify those numbers?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Rebecca MacKenzie:** The Premier had prorogued the House and resigned as Premier when I stepped into the role as manager of issues management.

**Mr. Rob Leone:** So he wouldn't have asked you to triple-check numbers that the government would continue to use and that he continued to use? I think that we have Toronto Star articles that cite a number—numbers for the plant cancellations. He wouldn't have asked you then to triple-check those numbers?

**Ms. Rebecca MacKenzie:** I can't recall him asking that.

**Mr. Rob Leone:** Would you be responsible for triple-checking numbers when he uses them?

**Ms. Rebecca MacKenzie:** For question period? On files that I was responsible for?

**Mr. Rob Leone:** And when he goes out to the media.

**Ms. Rebecca MacKenzie:** Pardon me?

**Mr. Rob Leone:** And when he scrums in the media or takes interviews.

**Ms. Rebecca MacKenzie:** No, I wouldn't have been involved in fact-checking information for interviews.

**Mr. Rob Leone:** So who would?

**Ms. Rebecca MacKenzie:** I can't speculate on who exactly, but people who work in the Premier's press office would have had a process for that.

**Mr. Rob Leone:** They would have had a process for it, an identified process.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

To Mr. Tabuns, or Ms. Fife. Welcome to the committee.

**Ms. Catherine Fife:** Thank you very much. "It's such a pleasure to be here," she says somewhat sarcastically.

Thank you very much, Rebecca, for coming before the committee. Going through your career here at Queen's Park, there are quite a few moves, but at any one point can you recall having a strong overview or at least even a brief overview of a brief about the Mississauga and Oakville cancellation?

**Ms. Rebecca MacKenzie:** No.

**Ms. Catherine Fife:** Never?

**Ms. Rebecca MacKenzie:** No.

**Ms. Catherine Fife:** When you were writing the press releases and speeches and question and answers—I understand the pace is quite fast—but at any one point did you feel the pressure to at least vet some of the facts that were contained within those documents?

**Ms. Rebecca MacKenzie:** Just to clarify, with the exception of that question and answer and the key messages, when I was at the Ministry of Energy, none of the other documents that I worked on had anything to do with the cancellation and relocation of either gas plant. They were other issues, and so they were much more about kind of phrasing and word use and sentence structure and sort of general communications principles that you want to have a good headline on the press

release when it goes out. They certainly weren't policy-heavy documents, and I wouldn't have been the only person involved in their production. I wasn't creating things from scratch; they were drafts created from an agency or from the ministry before they came to me for my review.

**Ms. Catherine Fife:** Okay. But as has been pointed out, this was a big issue, right? It was going to get bigger; I don't think people knew that at the time. But when the FOI request came in for additional information, did you participate at all in that process?

**Ms. Rebecca MacKenzie:** I did participate in the process. The first FOI, I believe, for the code words "Project Vapour," I did not have any responsive records for. In fact, the first time I heard that term was when I was given the FOI. I can't recall the exact date, but I did have responsive documents for the second FOI that came in, and I handed those over.

**Ms. Catherine Fife:** So what was the language around that FOI?

**Ms. Rebecca MacKenzie:** I can't recall. It had to do with sort of how the first FOI had been handled.

**Ms. Catherine Fife:** Okay. So it was more expansive, right? So then you did participate in that, and so you provided documents—

**Ms. Rebecca MacKenzie:** I participated in both, and I didn't have responsive—

**Ms. Catherine Fife:** For Project Vapour.

**Ms. Rebecca MacKenzie:** That's right.

**Ms. Catherine Fife:** Okay. Just to put it in the public record, were you involved at all—in any way, shape or form—in the cancellation of the Oakville and Mississauga gas plants?

**Ms. Rebecca MacKenzie:** I was not.

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**Ms. Catherine Fife:** From an administrative perspective, though, do you delete all of your emails and other documents on your computer?

**Ms. Rebecca MacKenzie:** I do not.

**Ms. Catherine Fife:** You do not. You archive them according to month, date?

**Ms. Rebecca MacKenzie:** I'm familiar with the records schedule for the Premier's office, and I follow it to the best of my ability.

**Ms. Catherine Fife:** Okay. Also according to your procedures, do you destroy all hard-copy letters or reports that you receive, or are they kept on file? Just for the record, can you clarify how long they are kept on file for?

**Ms. Rebecca MacKenzie:** I keep them on file. I will say, though, that the nature of my job in both communications and issues management positions is that the majority of the products I deal with are in draft form. They're also almost always held by a different ministry, the ministry that created them then follows that policy development as the holder of those documents. I don't keep things that are in draft form and in different points of development.



**Ms. Catherine Fife:** Also for the record: I think you've stated this, but are you aware of the requirements of the Archives and Recordkeeping Act?

**Ms. Rebecca MacKenzie:** I am.

**Ms. Catherine Fife:** And you adhere to those?

**Ms. Rebecca MacKenzie:** Yes. I haven't been here for five years.

**Ms. Catherine Fife:** And do you inform the staff—do you have staff, actually, that report to you?

**Ms. Rebecca MacKenzie:** I do.

**Ms. Catherine Fife:** And you would make sure that they are also—

**Ms. Rebecca MacKenzie:** Absolutely; actually, I was very pleased that last month there was a meeting for every political staffer. We reviewed the requirements around record-keeping.

**Ms. Catherine Fife:** Okay. Thank you. Do you have any questions?

**Mr. Peter Tabuns:** I have no questions.

**Ms. Catherine Fife:** Thank you very much, Rebecca.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Fife.

To the government side, Ms. Cansfield?

**Mrs. Donna H. Cansfield:** I just wanted to clarify a couple of questions, because every government does things a little bit differently. Since I'm a little bit more familiar with what happens around issues management, I thought that maybe we could help to have an understanding of how, in fact, this government works.

You joined the office, I guess it says, in February 2012, in issues management.

**Ms. Rebecca MacKenzie:** The Premier's office, yes.

**Mrs. Donna H. Cansfield:** And if I recall, you had how many files that you were looking after?

**Ms. Rebecca MacKenzie:** When it was just two of us in that office, we kind of split them right down the middle, so it would have been between a dozen and 15 files.

**Mrs. Donna H. Cansfield:** Right. As I recall, as a former minister, what would happen is that I or my staff would liaise with the issues management person, virtually every day, on whatever the issues were. Then you had to go in—and typically you went in on your own—to the Premier, to brief him on whatever that issue was.

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Donna H. Cansfield:** And so, that would happen with 10 or 15 files, then you would leave, then the next person would go in with their files. I think that's a really important issue to understand, how you manage issues, because they're complex and complicated and there are so many of them. It's not like you sit around all day, because in addition to that, is it correct that you also had to attend cabinet meetings sometimes on those issues?

**Ms. Rebecca MacKenzie:** Yes, anything from a caucus meeting to a cabinet meeting. There were two daily issues meetings with the legislative assistants that we were also responsible for leading.

Yes, there were a number of meetings. If you had an issue that was coming up, there were regular communica-

tions planning meetings and look-aheads. There are a couple of ministries, like I mentioned before, that have quite a heavy workload; you would have, whether it was weekly or biweekly, regular scheduled meetings that I would sit in on as well.

**Mrs. Donna H. Cansfield:** So I think it would be fair to say that you didn't have time for anybody else's issues.

**Ms. Rebecca MacKenzie:** No, I didn't.

**Mrs. Donna H. Cansfield:** You had enough of your own to deal with.

As I said, I know that each government does things a little bit differently, but I do know that this, in fact, is how Dalton managed things. He would call someone in, get briefed on a particular issue—or issues; whatever you had—and then you'd go off and the next individual—

**Ms. Rebecca MacKenzie:** I'll just clarify, Donna: We would frequently do the issues briefing—they were very brief—before question period, but we would often do them together, just to quickly go through things.

**Mrs. Donna H. Cansfield:** But they would be more at the 40,000-feet level, I would say.

**Ms. Rebecca MacKenzie:** Absolutely.

**Mrs. Donna H. Cansfield:** You don't have time to get into those details when you've got 23 ministers.

**Ms. Rebecca MacKenzie:** Yes, and I think that the Premier's Hansard from question period would reflect that sort of high-level approach.

**Mrs. Donna H. Cansfield:** I agree. How long do you think those briefings would last?

**Ms. Rebecca MacKenzie:** Depending on the Premier's schedule and depending on the number of issues coming up that day, they could be as short as five minutes. I can't recall them ever taking longer than 15.

**Mrs. Donna H. Cansfield:** So, typically you're in and you're out.

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Donna H. Cansfield:** There's not a strong opportunity—and they were a range of topics, but you would say that they were really high-level at the same time. I just think that's important—as I said, everybody has a different approach in how they deal with this, but certainly I recall spending a great deal of time with some of the issues I was dealing with, with the issues management folks, especially on certain files. So I just wanted to make sure that was sort of cleared up, what you were doing.

Laura, did you have some questions you want to ask?

**Mrs. Laura Albanese:** Well, I guess you sort of clarified more or less how the issues management work was done in the Premier's office. I would probably start maybe with the clarification of a few things. First of all, I know that you're appearing here after the first invitation? Is that clear, that you had received—

**Ms. Rebecca MacKenzie:** That's right, yes. I believe I was invited—last Thursday I had an invitation from the Clerk, and I responded the same afternoon.

**Mrs. Laura Albanese:** Then I think it's important to put on the record that you did respond voluntarily on



your first invitation since there have been some suggestions that some staffers have been refusing, so it's important to note that this is not the case. Were you surprised that you were called to testify at the committee?

**Ms. Rebecca MacKenzie:** I wasn't shocked, but I'm happy to have the opportunity to kind of clarify why I was at the Ministry of Energy for those two weeks. I appreciated a heads-up I received from one of my Conservative colleagues that morning, and I'm happy to be here.

**Mrs. Laura Albanese:** I would like to clarify the timeline a little bit. We heard from Minister Duguid that the decision to cancel the Oakville gas plant was made in the fall of 2010. Where were you working at that time?

**Ms. Rebecca MacKenzie:** I had just started at Queen's Park at the end of September, and I was working at the Ministry of Community and Social Services.

**Mrs. Laura Albanese:** One of the things we've also heard very often in this committee is that the commitment to relocate the Mississauga gas plant was made by all parties in September and October 2011. Your role during that time frame was?

**Ms. Rebecca MacKenzie:** I was living in Barrie, Ontario, at the time. I was the manager of the local campaign there. I'd moved to Barrie just before the start of the election, and I was there for the duration.

**Mrs. Laura Albanese:** So you had no involvement with either the Oakville or Mississauga decisions then?

**Ms. Rebecca MacKenzie:** No.

**Mrs. Laura Albanese:** The other questions that I had, always of clarification level: You were at the Ministry of Energy for a period of two weeks?

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Laura Albanese:** So you arrived after the document release of September 24?

**Ms. Rebecca MacKenzie:** I can't recall the exact hour of the day that I would have first showed up in that office, but it would have been decided; it had been decided prior to my arrival. It was certainly part of the reason that I was there that there had been an agreement reached, and the documents were going out. I didn't have an involvement in sort of the pre-release portion.

**Mrs. Laura Albanese:** You mentioned that other persons were really involved with the document disclosures and the related media interest in regards to that.

**Ms. Rebecca MacKenzie:** Yes.

**Mrs. Laura Albanese:** Can you give us a more detailed example of what you worked on during those two weeks?

**Ms. Rebecca MacKenzie:** Yes. It was something that I recalled, or I went back to recall when I was preparing my opening statement. I'm just going to refer back to that. There was a speech that Minister Bentley prepared—actually I learned that he speaks a little bit of German as I was preparing that speech because it was to German solar power stakeholders. There was a press release that went out on solar power from energy. There was a communications product about sort of lowering your energy use that I helped out with and some Web copy for the ministry.

**Mrs. Laura Albanese:** Okay. And after these two weeks, you returned to the Premier's office, correct?

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Laura Albanese:** Did you continue to provide support to then-Premier McGuinty while you were at the Ministry of Energy?

**Ms. Rebecca MacKenzie:** During the period that I was at the Ministry of Energy, the last weekend in September was the Liberal Party annual general meeting. I was in Ottawa, and I sat in on the Premier's media availability during that time, but I wasn't involved in sort of daily briefings with the Premier or my usual tasks that I would have done for the Premier during the time that I was at the Ministry of Energy.

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**Mrs. Laura Albanese:** Okay. That's it for this round for us, unless you have—

**Mrs. Donna H. Cansfield:** I just have a couple of other questions. I think one of the important comments that you made was—and again, I'll go back to my own personal experiences, but sometimes when speeches are written by other individuals they don't exactly reflect who you are as a person. Often I would ask someone to go over them, if nothing else to look at the Queen's English to make sure that I didn't sound like an idiot when I was giving the speech. Is that copy editing?

**Ms. Rebecca MacKenzie:** Yes, and also looking for typos and sentence structure. When I'm working on a speech I often read it out loud to myself to see how it sounds and I would have done the same thing for the one that I worked on with Minister Bentley.

**Mrs. Donna H. Cansfield:** And it would have been the same thing for the Q and As. Typically, a lot of that information comes from the ministry side, you get it, then you edit it in terms of copy editing, which is the Queen's English, the grammar, the flow, that sort of thing.

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Donna H. Cansfield:** So you're not necessarily involved in the writing of that material nor is it your job to verify the material; your job is to edit the material so that in fact it's readable and in what I call Canadian Tire language so people can understand it. I wanted just to put that in and say thank you very much.

**The Chair (Mr. Shafiq Qadri):** Thank you. The government yields its time.

To the PC side, 10 minutes. Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you. I appreciate it. Did you ever discuss the documents with anybody at the Ministry of Energy or in the Premier's office?

**Ms. Rebecca MacKenzie:** Discuss them in what context?

**Mr. Victor Fedeli:** Any context.

**Ms. Rebecca MacKenzie:** I'm sure that there would have been conversations about newspaper stories and the like. Certainly everyone was aware that documents were going out, but I wasn't aware of the document disclosure process or the document production process, so I wouldn't have been able to discuss that in any detail.

**Mr. Victor Fedeli:** In your time at the Ministry of Energy would you have discussed this upcoming second



document dump that came, the 20,000 documents? Would that have been part of those discussions that you had?

**Ms. Rebecca MacKenzie:** At some point—I can't recollect the exact date—during my time at the Ministry of Energy, I was told that there was a possibility that there were more documents.

**Mr. Victor Fedeli:** Do you recall the date?

**Ms. Rebecca MacKenzie:** I don't. I believe it was at some point over that weekend, but I was in Ottawa. Someone mentioned it to me.

**Mr. Victor Fedeli:** What was the date of that weekend again?

**Ms. Rebecca MacKenzie:** The last weekend in September—

**Mr. Victor Fedeli:** The last weekend of September?

**Ms. Rebecca MacKenzie:** But I was back in the Premier's office by the time documents were released and—

**Mr. Victor Fedeli:** But you heard about the fact that there may be another document dump—

**Ms. Rebecca MacKenzie:** That there may be.

**Mr. Victor Fedeli:** On that last weekend of September before the public announcement? Would you have done any talking points for the Liberal Party during that September 24 to October 5 period?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** Who would have been responsible for those? Who would have crafted the talking points where they were splitting hairs between "ratepayer" and "taxpayer" and \$40 million being the total when we now know that that wasn't accurate? Who would have written those talking points?

**Ms. Rebecca MacKenzie:** Sorry, talking points for whom?

**Mr. Victor Fedeli:** The cabinet ministers, the dozen caucus members who stood up and repeated these things.

**Ms. Rebecca MacKenzie:** This sounds similar to the question I answered in the last round.

**Mr. Victor Fedeli:** On September 24, 25 and 26, somebody wrote talking points for these people.

**Ms. Rebecca MacKenzie:** Right. I was in the Ministry of Energy. I don't know who it would have been.

**Mr. Victor Fedeli:** On September 23, who would have been writing talking points? Or on October 6, who would have been writing talking points for Liberal members?

**Ms. Rebecca MacKenzie:** I can't speculate because it could have been a variety of different people—

**Mr. Victor Fedeli:** Do you know why I'm pushing so hard on this point? Because there are so many inaccuracies in there. We're trying to get to the truth. Now, we have learned that the government knew that those numbers were wrong. They weren't the total. We now know that there were documents withheld during that time you were there. We've now learned from you that you were aware there may be more documents and subsequently there were. We're trying to find out who was writing these things and providing them to the

caucus members for them to stand up and repeat in the caucus when we all now know that they were incorrect.

**Ms. Rebecca MacKenzie:** I do not know the answer to that.

**Mr. Victor Fedeli:** You were sent by the Premier into the Ministry of Energy during that September 24 to October 5 period—

**Ms. Rebecca MacKenzie:** I wasn't sent by the Premier.

**Mr. Victor Fedeli:** Who were you sent by?

**Ms. Rebecca MacKenzie:** My direct supervisor asked me. I understand—

**Mr. Victor Fedeli:** And who was that?

**Ms. Rebecca MacKenzie:** John O'Leary. I understand that there was a conversation where my name was raised. I don't know who was involved in that conversation, but it wasn't a conversation that I had with the Premier at the time.

**Mr. Victor Fedeli:** So you were sent over there—was it to manage that crisis that was over there? These guys were in flux. Is this what I can expect from you as one of three people in issues management? Were you sent there to manage this issue?

**Ms. Rebecca MacKenzie:** I was chosen because of my background in communications. That was what had been identified as a gap in that office at the time.

**Mr. Victor Fedeli:** A gap in that office. Did you ever discuss the documents with Jamison Steeve, Sean Mullin or Craig MacLennan?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** None of those people. Who on that last weekend in September would have said to you that there may be more documents coming?

**Ms. Rebecca MacKenzie:** I can't recall who told me.

**Mr. Victor Fedeli:** I want you to think about that for another minute or two while we finish up.

Was Chris Morley ever involved in the document request or the search?

**Ms. Rebecca MacKenzie:** I can't answer that because I wasn't involved in the document production or search.

**Mr. Victor Fedeli:** What about David Livingston? What was his extent of involvement in that?

**Ms. Rebecca MacKenzie:** For the same reason, I can't answer that.

**Mr. Victor Fedeli:** What degree of contact did you have with Ministry of Energy people in those two weeks that you were at the ministry during the crisis period?

**Ms. Rebecca MacKenzie:** Sorry; the minister's office or the ministry?

**Mr. Victor Fedeli:** Either.

**Ms. Rebecca MacKenzie:** I was physically situated in the minister's office. I think I went out for lunch with them a couple of times. The ministry—I had no involvement. I didn't deal with anyone in the ministry.

**Mr. Victor Fedeli:** Do you know who Ryan Dunn is?

**Ms. Rebecca MacKenzie:** I do.

**Mr. Victor Fedeli:** And did he have a role in the document search and disclosure?



**Ms. Rebecca MacKenzie:** He was the minister's issues manager at the time. But again, because I wasn't involved in the search and disclosure, I don't know what his exact role would have been.

**Mr. Victor Fedeli:** Did he order the documents to be withheld?

**Ms. Rebecca MacKenzie:** I can't speculate on that.

**Mr. Victor Fedeli:** Do you know who Andrew Forgiione is?

**Ms. Rebecca MacKenzie:** I do.

**Mr. Victor Fedeli:** What role did Mr. Forgiione play in the document search and disclosure?

**Ms. Rebecca MacKenzie:** For the same reason I can't comment on Mr. Dunn's involvement, I couldn't comment on Mr. Forgiione's involvement.

**Mr. Victor Fedeli:** Have you ever spoken to Jesse Kulendran?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** Do you know who she is?

**Ms. Rebecca MacKenzie:** I do because of these committee hearings.

**Mr. Victor Fedeli:** Okay. Do you know who at the Ministry of Energy would have given Jesse Kulendran her marching orders?

**Ms. Rebecca MacKenzie:** I don't.

**Mr. Victor Fedeli:** So you're telling us that you had no role in the handling of documents, the deletion of documents, the redaction of documents or the withholding of documents.

**Ms. Rebecca MacKenzie:** I did not.

**Mr. Victor Fedeli:** This was not your area. Do you know who ordered the document redaction?

**Ms. Rebecca MacKenzie:** I don't.

**Mr. Victor Fedeli:** Do you know who ordered the document omissions?

**Ms. Rebecca MacKenzie:** I don't.

**Mr. Victor Fedeli:** Do you know who ordered the OPA to remove documents, the ones that were subsequently replaced?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** When you had your lunch with the minister, did you ever talk about—

**Ms. Rebecca MacKenzie:** The minister was not there, just people in the office. I think we went to the sandwich lady beside Rabba.

**Mr. Victor Fedeli:** That's fine. Did you ever talk about the \$40 million or the \$190 million numbers?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** Did you ever talk about the fact that there were more documents about to be disclosed?

**Ms. Rebecca MacKenzie:** No.

**Mr. Victor Fedeli:** When you learned that on that weekend in September, do you remember yet who told you about that?

**Ms. Rebecca MacKenzie:** I can't recall.

**Mr. Victor Fedeli:** You can't recall.

**Ms. Rebecca MacKenzie:** It's possible I heard it from more than one person.

**Mr. Victor Fedeli:** You think there would be more than one person at a Liberal function who would have known weeks before the public that there were documents coming?

**Ms. Rebecca MacKenzie:** That there may be—

**Mr. Victor Fedeli:** And subsequently were. You don't recall who you would have spoken with you about that?

**Ms. Rebecca MacKenzie:** I'm sorry. I can't recall who it would have been.

**Mr. Victor Fedeli:** Okay. Did you ever work with Ryan Dunn?

**Ms. Rebecca MacKenzie:** I would have worked with him when I was at the Ministry of Energy—not directly, but we would have been in the same physical space.

**Mr. Victor Fedeli:** Did you ever advise the minister on which numbers to use?

**Ms. Rebecca MacKenzie:** No. I had very limited involvement with the minister when I was there.

**Mr. Victor Fedeli:** I keep asking about those numbers because we all know they were wrong. We all know that the Liberal members knew they were wrong when they continued to manage this issue. You were the issues manager, did you know those numbers were wrong when you were promoting them?

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**Ms. Rebecca MacKenzie:** I did not, no. Those were the numbers that I was given.

**Mr. Victor Fedeli:** By whom?

**Ms. Rebecca MacKenzie:** They were sort of in all the documents that I was shown. I wasn't involved in a discussion around—

**Mr. Victor Fedeli:** So you did see documents?

**Ms. Rebecca MacKenzie:** The question-and-answer and the key messages.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** And who wrote those key messages?

**Ms. Rebecca MacKenzie:** I mentioned that I can't speculate on that. I don't know who would have been the original author.

**Mr. Victor Fedeli:** You were the issues manager.

**Ms. Rebecca MacKenzie:** One of, yes.

**Mr. Victor Fedeli:** One of three in the office.

**Ms. Rebecca MacKenzie:** Yes, and—

**Mr. Victor Fedeli:** This is the biggest issue to hit the province in your lifetime, the biggest scandal to hit, and you're sitting there telling us you don't know anything about this issue. When you were sent over to the Ministry of Energy for those crisis two weeks—the biggest two weeks in that Ministry of Energy, when they were handling 56 documents; they themselves say, "This is the biggest thing to hit"—you didn't know anything about that either. You were the communications person in the biggest communications issue that ever hit.

**Ms. Rebecca MacKenzie:** I wasn't involved in the document production or disclosure.

**Mr. Victor Fedeli:** Well, I have reason to believe that you're much deeper involved in this particular scandal than you're letting on here.



**Ms. Rebecca MacKenzie:** So, Mr. Fedeli, I'm not sure if there's something that you want to share with me or—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Ms. Fife now, to the NDP side.

**Ms. Catherine Fife:** Thanks, Rebecca. This is quite a committee.

Just to review, you very clearly outlined that you had a protocol with regard to the Archives and Recordkeeping Act, that you were knowledgeable about it and the people in your office were knowledgeable about it. With that in mind, were you surprised to learn that Jamison Steeve, Chris Morley and Sean Mullin deleted emails? When you learned that they had actually done this, can you talk about your response to that?

**Ms. Rebecca MacKenzie:** I don't want to speculate on other people's document retention policies. I can really only speak to my own and the information that I share with the individuals in my office. I can share with you that I had quite a busy weekend at the office, because there is this additional committee request. I don't think I've ever spent quite so much quality time with my photocopier. My whole office went through the process of printing and searching and disclosing documents for this latest committee request.

**Ms. Catherine Fife:** But I'm not asking about other speculation. I'm asking you about your response. Were you surprised to learn that these other key people had deleted emails?

**Ms. Rebecca MacKenzie:** I think that within the record schedule there certainly are emails that don't need to be kept. I don't really want to comment on other people's practices.

**Ms. Catherine Fife:** Okay. But the Archives and Recordkeeping Act, is this not a standard? It's my understanding that this is a standard practice, and it's a standard protocol that we all have to adhere to because we work here at Queen's Park and at various ministries and in various capacities. Doesn't it seem that rules were broken? If this is a standard procedure, it does appear that when you delete emails, this is not in keeping with the record-keeping protocol.

**Ms. Rebecca MacKenzie:** I'm not a lawyer, but there is both the Archives Act and the Premier's office records schedule, and there are provisions within the Premier's office records schedule that provide instructions for which emails are appropriate to delete. So I would mention that.

I don't know which emails other staff members would have kept or deleted, so I can't comment on that.

**Ms. Catherine Fife:** Okay. With regard to the record-keeping protocol, though, who taught you about the record-keeping protocol? Was this part of your orientation into the ministry, for instance?

**Ms. Rebecca MacKenzie:** I can't recall who would have had that initial conversation with me. It's something that, perhaps, I discussed with a chief of staff or something. But I've always been aware of it.

**Ms. Catherine Fife:** Would Morley, Steeve and Mullin also have received a briefing around the Archives and Recordkeeping Act?

**Ms. Rebecca MacKenzie:** I don't know.

**Ms. Catherine Fife:** You can't comment on that.

Just to go back to the Q&As that you were editing, that you hadn't been briefed on, that's a difficult job, to edit something that you haven't been briefed on. Is that a common practice, that you just get a document and you're asked to copy-edit it?

**Ms. Rebecca MacKenzie:** Yes. I would say—I mean, for example, it would be very similar to when I started at community safety and correctional services right after the election. I certainly had no knowledge about those ministries when I first started. You just kind of dive in headfirst. There would have been communications products that I would have immediately started to deal with at that ministry—or at community and social services, when I started there—before having any kind of policy background or additional knowledge of the content.

**Ms. Catherine Fife:** But who fact-checked those documents before you got to copy-edit them?

**Ms. Rebecca MacKenzie:** The speech, for example—the first draft would have been produced by the ministry. I don't know what it would have been, but there would have been a fact-checking process before a copy of the speech would be given to the minister's office for review, and the same with a press release.

**Ms. Catherine Fife:** Would anybody have checked with OPA, for instance, about the numbers?

**Ms. Rebecca MacKenzie:** Oh, for the question-and-answer, the key messages?

**Ms. Catherine Fife:** Yes, the Q&A piece.

**Ms. Rebecca MacKenzie:** I don't know what the process for creating the draft that I saw would have been.

**Ms. Catherine Fife:** Okay. It seems to me that there are some inconsistencies around record-keeping. As the chief of staff, though, Mr. Morley would have been aware of the Archives and Recordkeeping Act, right?

**Ms. Rebecca MacKenzie:** I'm not Mr. Morley, so I can't answer that question.

**Ms. Catherine Fife:** It wasn't part of your orientation from the chief of staff when you came into that ministry?

**Ms. Rebecca MacKenzie:** When I came to the Premier's office or—

**Ms. Catherine Fife:** Yes, and energy.

**Ms. Rebecca MacKenzie:** There wasn't—I can't recall how I was briefed on it.

**Ms. Catherine Fife:** Okay.

**Ms. Rebecca MacKenzie:** I'll point back again, though—I think I said this previously—that the entire political staff has just gone through that training. That was something that was important for the new Premier's office, for everyone to be on the same page. There are certainly a lot of new people working at Queen's Park, so we did recently do that training, and I made sure that the staff in my office are well aware of their obligations.

**Ms. Catherine Fife:** This sounds like a progressive move, a good move, to do the training around archives and record-keeping. But to the best of your knowledge, that training hadn't happened in a comprehensive way then?



**Ms. Rebecca MacKenzie:** Sorry, previously?

**Ms. Catherine Fife:** Yes.

**Ms. Rebecca MacKenzie:** I don't know.

**Ms. Catherine Fife:** Okay. Do you have any questions?

**Mr. Peter Tabuns:** No.

**Ms. Catherine Fife:** Thanks, Rebecca.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Fife. To the government side, Mrs. Cansfield.

**Mrs. Donna H. Cansfield:** Thank you, Rebecca. I wanted to clear up—I think that there's some sort of a misunderstanding that you were sent from the Premier's office to manage some crises in energy. My understanding from your testimony is that you were actually sent from the Premier's office over to energy to help on the communications file, because they had a number of personnel who had left.

**Ms. Rebecca MacKenzie:** Yes, and that's my background, primarily.

**Mrs. Donna H. Cansfield:** And that is your background. So, in essence, you were just filling a gap. You weren't managing—if there was a crisis, it was just that you were doing the job of three people on all the other files other than—

**Ms. Rebecca MacKenzie:** That's right.

**Mrs. Donna H. Cansfield:** So I think it's really important to ask this question: Did you have any involvement, other than the Q&A copy-editing, on either of those gas plants?

**Ms. Rebecca MacKenzie:** I did not.

**Mrs. Donna H. Cansfield:** You did not. I think that's a really important statement: You did not.

I want to thank you. I mean, I know how difficult—when you've got so many balls that you're juggling, and people just make the assumption that everything that goes on around you, you know about. I can share with you, certainly, again from my own perspective, that that isn't always the case. I thank you for coming and sharing with us your perspective.

**Ms. Rebecca MacKenzie:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The government yields its time? All right. Thank you, Ms. MacKenzie, for your testimony. You're officially dismissed. Thank you.

We have now a number of motions. Mr. Tabuns, I invite you to enter yours into the record.

**Mr. Peter Tabuns:** I move that the Ontario Power Authority provide the Standing Committee on Justice Policy its estimates, projections or ranges for non-sunk costs created in contemplation of signing the MOU with TransCanada and this be provided within two weeks of this motion passing.

**The Chair (Mr. Shafiq Qaadri):** Thank you. The motion is in order as read. Any comments before we vote?

Seeing none, all in favour? All opposed? Motion carried.

**Mr. Tabuns:** The next move?

**Mr. Peter Tabuns:** I move that when witnesses are confirmed, that their profiles be provided to committee

members at least 24 hours prior to the witnesses appearing before the committee.

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**The Chair (Mr. Shafiq Qaadri):** That's fine. That's not the motion as written, but—

**Mr. Peter Tabuns:** Sorry.

**The Chair (Mr. Shafiq Qaadri):** —we certainly appreciate your editing or copy-editing as it were.

**Mr. Peter Tabuns:** I think the one I read out is a better one.

**The Chair (Mr. Shafiq Qaadri):** That may be the case, and no doubt is, but it's not the one I have which is before the committee.

**Mr. Peter Tabuns:** Ah.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Can you just repeat it?

**The Chair (Mr. Shafiq Qaadri):** Repeat it, Mr. Tabuns.

**Mr. Peter Tabuns:** Sorry. I can go to the one you have in your hand because I think the sense is the same.

I move that when witnesses are confirmed, that their profiles be provided to committee members with at least 24 hours' notice.

Are you a happy man, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** I don't know if Mr. Delaney's going to challenge the embedded ambiguity there or let it pass, but in any case—

**Mr. Bob Delaney:** May we offer a friendly amendment, to delete the word "that" before "their profiles"?

**Mr. Peter Tabuns:** Sure.

**Mr. Victor Fedeli:** I guess it depends on what the word "is" is.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Clinton.

**Mr. Peter Tabuns:** I think we have the sense.

**The Chair (Mr. Shafiq Qaadri):** All right. Those in favour of this motion? Those opposed? Motion carries.

Mr. Fedeli, you've got some motions as well?

**Mr. Victor Fedeli:** I do, sir.

**The Chair (Mr. Shafiq Qaadri):** They need to be distributed.

All right. Just before we do that, Mr. Parker has an issue with your somewhat ambiguous motion.

**Mr. Victor Fedeli:** The one that we already passed?

**The Chair (Mr. Shafiq Qaadri):** The one that we already passed, and now have to implement.

**Mr. Jeff Parker:** I'm not trying to quibble, Mr. Tabuns, or to impugn the work—

**The Chair (Mr. Shafiq Qaadri):** Impugn motive? Go ahead.

**Mr. Jeff Parker:** Sometimes we get confirmation maybe two hours before the—I believe this committee has a standing 24-hour deadline to confirm a witness and sometimes we get confirmation, say, 26 hours before, in which case we're working under a very short timeline for confirmation of the witness and being able to put out the information to meet with your instructions.

**The Chair (Mr. Shafiq Qaadri):** So we can form a motion for you to stay up all night. I mean, we have no issues with that.

**Mr. Victor Fedeli:** I think that's what we should be doing.

**Mr. Jeff Parker:** I'm actually not the one who prepares these, but the office does. So I want to get—

**Mr. Victor Fedeli:** Then what's your worry?

**Mr. Peter Tabuns:** No. If I can speak to this, I understand the time constraints you operate under. At our end, when we get them late, it makes it much tougher for us to prepare questions. I leave it to you and the Clerk to be creative, but we actually need this material 24 hours in advance.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone?

**Mr. Rob Leone:** Can I just offer a suggestion?

**The Chair (Mr. Shafiq Qaadri):** Sure.

**Mr. Rob Leone:** We are all providing lists of witnesses in advance and perhaps some preparatory work, once you receive those lists, might allow you to meet the restrictions—if they are prohibitive or not, I'm not going to make a comment on—that the intent of that motion was there. I know it probably creates a little bit more work, but at the end of the day I agree with Mr. Tabuns that having some bios would be of good use to this committee.

**The Chair (Mr. Shafiq Qaadri):** A most reasonable suggestion, Mr. Leone. Fair enough. That motion's dealt with.

Mr. Fedeli, next motion?

**Mr. Victor Fedeli:** I'll read the longer of the two motions first, Chair.

I move that the Standing Committee on Justice Policy requests the following documents from the Ministry of Finance within two calendar weeks of the motion passing:

(1) All documentation and correspondence, electronic or otherwise, between January 1, 2010, and May 14, 2013, related to the cancellation and relocation of the power plants in Oakville and Mississauga, including but not limited to documents containing any and all proxy names or code names such as but not limited to SWGTA, Project Vapour, Project Vapour Lock, Project Apple, Project Banana and Project Fruit Salad, and that the documents be provided in a searchable, electronic PDF.

**The Chair (Mr. Shafiq Qaadri):** Thank you. A motion before the floor: Comments before we vote, if any?

Seeing none, those in favour of this motion? Those opposed? Motion carries.

Mr. Fedeli, next motion.

**Mr. Victor Fedeli:** Thank you, Chair. I'm reluctant, but I'll read this anyway, Chair. Under duress, I will read this.

I move that the Standing Committee on Justice Policy meet on Thursday, May 23, 2013, from 9 a.m. to 1:35 a.m.—

**Mr. John Yakabuski:** No, 11:35.

**Mr. Victor Fedeli:** —to 11:35 a.m. and 1 p.m. to 5:05 p.m.;

That the Clerk of the Committee proceed with scheduling one witness per caucus and that the rotation of the three witnesses remains consistent with the hitherto established schedule.

**The Chair (Mr. Shafiq Qaadri):** The committee, and the Chair in particular, thanks you for this particular motion, Mr. Fedeli.

**Mr. Victor Fedeli:** Oh, I'm real thrilled to come from North Bay on that day.

**The Chair (Mr. Shafiq Qaadri):** Are there any comments before this—

**Mr. Bob Delaney:** Can you not do without the pleasure of our company for just one week?

**Mr. Victor Fedeli:** There's important work here, Mr. Delaney. We need to get to the bottom of this scandal at our earliest possible convenience.

**The Chair (Mr. Shafiq Qaadri):** I'll take that as the government's comment on this motion.

Are there any further comments before we move—

**Mrs. Laura Albanese:** Notice. Extra notice. It's a constituency week.

**The Chair (Mr. Shafiq Qaadri):** Fine. Those in favour of this motion? Those opposed? Motion carries.

**Mr. Victor Fedeli:** We also met on Easter week. We also met on March break.

**The Chair (Mr. Shafiq Qaadri):** Unless there's any further business before this committee—seeing none, committee is adjourned.

*The committee adjourned at 1745.*



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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 16 May 2013

# Journal des débats (Hansard)

Jeudi 16 mai 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

Privilèges des députés



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 16 May 2013

Jeudi 16 mai 2013

*The committee met at 0830 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting to order of the Standing Committee on Justice Policy.

## MR. JOHN KELLY

**The Chair (Mr. Shafiq Qaadri):** I invite our first presenter to please come forward: Mr. John Kelly, counsel, crown law office, civil division, the Ministry of the Attorney General. Welcome, Mr. Kelly. I invite you to (a) be seated, and (b) be sworn in.

**Mr. John Kelly:** Sure.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. John Kelly:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Kelly. As you know the protocol, I invite you to begin your five-minute opening address now.

**Mr. John Kelly:** Thank you, Mr. Chairman. My name is John Kelly and I am counsel at the crown law office, civil division, of the Ministry of the Attorney General. I joined that ministry's division in June 2010 upon retirement from private practice, where I was senior counsel at Lang Michener in Toronto in the commercial law group.

I am here at the invitation of the committee, and as you know, as a lawyer, I have an obligation to preserve the privileges and confidentialities of my client. I have received my client's instructions that I am entitled to discuss the matters relating to these documents with you without in any way waiving any other privilege that would exist for these documents.

Thank you, Mr. Chairman.

**The Chair (Mr. Shafiq Qaadri):** Does that conclude your opening remarks, Mr. Kelly?

**Mr. John Kelly:** It does.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We'll now begin with the NDP. Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Kelly, thank you for being here this morning.

**Mr. John Kelly:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns—I'll give you your time back in a moment.

I just wanted to inform you, Mr. Kelly, that the committee respects what you've just said with reference to the privileged documents and so on. I just wanted to inform you that as a parliamentary committee, our privileges actually trump those.

**Mr. John Kelly:** We understand that.

**The Chair (Mr. Shafiq Qaadri):** Yes. Mr. Tabuns, go ahead.

**Mr. Peter Tabuns:** Thank you. Mr. Kelly, were you given a package of documents by the Clerk?

**Mr. John Kelly:** No. I have documents that I understand were sent to the committee. They may be the same.

**Mr. Peter Tabuns:** This is a package of documents that will be circulated to everyone in the committee. You have an item here—well, even before I go to this, why were you assigned this case?

**Mr. John Kelly:** We had a call from counsel for TransCanada, who alleged that an agreement had been reached between the government and TransCanada with respect to the Oakville plant, that negotiations had been ongoing and were unsuccessful, and that they wanted to meet with certain representatives from the Attorney General's office to discuss this matter prior to making a decision as to whether to commence litigation against the government.

**Mr. Peter Tabuns:** And who in the government assigned you? When you say, "We had a call," you mean the government of Ontario.

**Mr. John Kelly:** Yes. I was asked by the assistant deputy Attorney General to meet with these people for the purpose of discerning what their issues were.

**Mr. Peter Tabuns:** Okay. How long was your involvement?

**Mr. John Kelly:** In total?

**Mr. Peter Tabuns:** In total.

**Mr. John Kelly:** I believe, according to the notes I have, I had my first telephone conversation with Mr. Barrack in May 2011. I carried on in different capacities through the negotiation of the final agreements. I was not involved in the negotiations with respect to final agreements, but from time to time, copies of materials would come to me.

**Mr. Peter Tabuns:** So you were involved with the Oakville gas plant, TransCanada Enterprises, until the final agreement was reached with them.



**Mr. John Kelly:** In different levels of involvement, yes.

**Mr. Peter Tabuns:** Okay. My first document here: On April 15, 2011, you met with the OPA and their lawyer from Osler. Halyna Perun, director of legal services, notes that knowing what was said apparently to TransCanada and when is a critical factor. Why is that? And that's actually the fourth paragraph down.

**Mr. John Kelly:** Well, obviously, in order to determine what the government's position is with respect to the allegations being made, it would be necessary to meet with the appropriate witnesses to determine what their versions of events were.

**The Chair (Mr. Shafiq Qaadri):** Sorry, Mr. Kelly, can you try just aiming yourself at the microphone there?

**Mr. John Kelly:** Yes. I'll aim myself this way.

**Mr. Peter Tabuns:** In the same email—and it's the third line above "Thank you" there—she notes that TransCanada Enterprises could name individuals in the lawsuit. Do you know who it was feared might be named and on what basis?

**Mr. John Kelly:** Not at that time, no.

**Mr. Peter Tabuns:** Did you know at a later time?

**Mr. John Kelly:** I had a meeting, as I indicated, in early June with counsel for TransCanada. They provided a number of names of people with whom their clients apparently met.

**Mr. Peter Tabuns:** Can you remember those names and give them to us?

**Mr. John Kelly:** I remember Craig MacLennan being one person from the Ministry of Energy. I remember Sean Mullin from the Premier's office; Jamison Steeve from the Premier's office, and Ben Chin from the Ministry of Energy. Those are the names that I recall.

**Mr. Peter Tabuns:** Okay. So that same document number 1, the second page is an email from you to Halyna Perun. You ask for a range of information to be secured in interviews with key people. Did you get those interviews?

**Mr. John Kelly:** I did.

**Mr. Peter Tabuns:** And who carried out the interviews?

**Mr. John Kelly:** I was there with Dennis Brown, senior counsel at the crown law office, as well as Darrell Kloeze, who took notes of meetings.

**Mr. Peter Tabuns:** Okay. And which persons were interviewed?

**Mr. John Kelly:** We interviewed, as I indicated, Craig MacLennan, Sean Mullin, Jamison Steeve and Ben Chin by telephone.

**Mr. Peter Tabuns:** Okay.

**Mr. John Kelly:** He was in British Columbia.

**Mr. Peter Tabuns:** What was your conclusion when you had reviewed their information?

**Mr. John Kelly:** What do you mean by "conclusion?"

**Mr. Peter Tabuns:** Did you conclude that they had said to TransCanada Enterprises, "We will preserve value," or "We will make you whole."

**Mr. John Kelly:** Well, Mr. Tabuns, my function was not to come to any conclusion. My function was to gather the evidence that was available. This was at the very preliminary stages. As you can appreciate, there was no pleading in the form of a claim. There was no production of documents. I'm sure there were probably hundreds, if not thousands, of other emails and so forth. I was really there to find out on a preliminary basis what their position was.

**Mr. Peter Tabuns:** I'll come back to that in a little bit.

On May 25, and this is document 2 from you to Halyna Perun, you wrote reporting a call with TransCanada Enterprises lawyers Finnigan and Barrack, in which "they confirm the govt. cancelled the contract," and that TCE was told it would be "made whole." Were you surprised at their statements?

**Mr. John Kelly:** At this stage, I wasn't surprised about anything. I was brand new to the file.

**Mr. Peter Tabuns:** What did you see as the legal consequence if what they were saying to you was true?

**Mr. John Kelly:** At that point, I had no idea what the contract value was because I hadn't even received it at this point. I just got a telephone call, and obviously I was recording for her—Halyna, who I was reporting to in this matter—what I'd been told.

**Mr. Peter Tabuns:** Setting aside the value of the contract, if those statements were true, what were the implications for the government's legal position?

**Mr. John Kelly:** Well, again, not knowing at this stage all the details of the contract, which I subsequently did review, it wasn't clear to me what an equivalent value would be, what "keeping whole" would mean in terms of—I didn't even know at that stage how long the contract was.

**Mr. Peter Tabuns:** On May 26, you wrote an email, document 3, to Carolyn Calwell and Halyna Perun in which you say TCE has indicated they've "assembled all their correspondence with ... the minister's office, OPA and the PO" about "the alleged agreement by the govt" on not using their full defences, that TCE was facing barriers to completion. Did you ever get the correspondence?

**Mr. John Kelly:** No. As a matter of fact I didn't get their correspondence because, ultimately, this matter went to arbitration on certain terms.

**Mr. Peter Tabuns:** Okay. We on this side have never seen their records of the exchanges with the Premier's office and otherwise—

**Mr. John Kelly:** We were read—at the first meeting with Mr. Barrack—notes from Christopher Breen, whom we understood was one of their PR people, who had taken notes in the meetings with these individuals. So we did have that.

**Mr. Peter Tabuns:** But you didn't have any other emails, letters, other exchanges?

**Mr. John Kelly:** Other than the documents which are in the binder that we sent to your committee, that's what I had.

**Mr. Peter Tabuns:** Okay. Document 4 is a slide deck prepared by the legal services branch, Ministry of Energy: TransCanada Energy and the Southwest GTA Clean Energy Supply Contract, Options for Arbitration. I've taken out two pages. Are you familiar with this slide deck?

**Mr. John Kelly:** I can't, in honesty, tell you if I am. I don't remember.

**Mr. Peter Tabuns:** Okay. This was put together some time in that May or early June period when you were assessing options. There were a few options: no arbitration, arbitration on damages and then arbitration on all the issues.

Under the "no arbitration" option, one of the disadvantages is that "Evidence will be required around the conversations between representatives of the crown and TransCanada in and around October 2010."

Could you speak to the kind of risk that was presented by that disadvantage?

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**Mr. John Kelly:** Actually, now that I'm looking at this document, I'm fairly certain that I have not seen it. I don't know who prepared this, but it comes from the Ministry of Energy. I'm not entirely sure, but obviously there was an anticipation that there would be evidence on record with respect to conversations that took place about this matter. That's really all I can say.

**Mr. Peter Tabuns:** So you wouldn't know the scale or nature of the risk at this point?

**Mr. John Kelly:** No. Not at this point, no.

**Mr. Peter Tabuns:** Did you know at a later point?

**Mr. John Kelly:** I formed a more fulsome view of the matter as my investigations went on and I was able to look at the few documents that we did have. I certainly didn't come to any final legal opinion on the matter, for the reasons I've described.

**Mr. Peter Tabuns:** And what was the opinion you held as you went further along?

**Mr. John Kelly:** It seemed to me that there was a reasonable prospect of satisfying a trier of fact of some kind—subject to, again, examinations for discovering evidence to the contrary—that there was a form of agreement, certainly not crystallized, that the government would provide some form of equivalent contract to the Oakville contract, whatever that was. In the sense of keeping the TransCanada Corp. whole, I think my impression was that it was to be an alternative plant of some form.

**Mr. Peter Tabuns:** Okay. In the second deck slide—

**Mr. John Kelly:** Option 2?

**Mr. Peter Tabuns:** Yes. "Option 2: Arbitration on Damages."

**Mr. John Kelly:** Yes.

**Mr. Peter Tabuns:** They talk about the advantages, and the disadvantages are that this "Creates highest financial exposure for the province and the OPA"—down at the bottom of the page.

**Mr. John Kelly:** Yes, I see it.

**Mr. Peter Tabuns:** So this would be a higher risk than going to trial?

**Mr. John Kelly:** Well, again, without the benefit of full discovery, production of documents and so on, it's very difficult to answer that question.

I see, at the top, it talks about, "Arbitration on damages ... with concessions that there are no limitations to damages" to be claimed, "and no defences based on TransCanada's inability to obtain permitting."

I expect that the disadvantage they're referring to is that if that was the way in which they were to proceed, and if TransCanada could establish all the damages it asserted, that would be a risk.

**Mr. Peter Tabuns:** Right, and the fact that there would actually be no defence at all on the part of the government or the OPA—

**Mr. John Kelly:** Well, no, that's not right. You certainly would be entitled to challenge their damages. As matters went forward, in fact, I learned that the OPA did have experts who were quite prepared to challenge the extent of the damages, which formed the basis of the ongoing negotiations. They had those defences. The defences they were talking about, as I understood it, were section 14(1) of the contract and the permitting issue.

**Mr. Peter Tabuns:** Right. Document 5, notes of a meeting with Finnigan and Barrack from TransCanada Enterprises on June 2, 2011. We've seen these quite a few times; you were part of that conversation.

**Mr. John Kelly:** I was, sir.

**Mr. Peter Tabuns:** They note that "preservation notices" were sent to TransCanada staff. This is underneath "Without prejudice," about six lines.

**Mr. John Kelly:** Yes.

**Mr. Peter Tabuns:** "They sent preservation notices to 82 people within" TransCanada Enterprises—"ask that we take the same step."

Would you, just for the record, explain what a preservation notice is?

**Mr. John Kelly:** A preservation notice is something that is sent to appropriate personnel who have, or could have, information or become witnesses with respect to the matters in issue. The instruction is to preserve the documents—in electronic form, hard copy, whatever—which may be in their possession with respect to the matters in issue.

**Mr. Peter Tabuns:** Did, in fact, the government of Ontario take that step?

**Mr. John Kelly:** My understanding—I have a note from the beginning of my notes on that, that I asked for one of my associates to call to the Ministry of Energy and follow up with that matter in terms of presentation. Now, you have to remember that we had received a PACA notice—

**Mr. Peter Tabuns:** Could you explain what a PACA notice is?

**Mr. John Kelly:** It's a notice that is required to be given under the proceedings against the crown 60 days before commencing litigation, in order to give the crown an opportunity to examine the issues raised in the notice.



**Mr. Peter Tabuns:** So when you receive that notice, you do everything you can to preserve the evidence on your side.

**Mr. John Kelly:** I, of course, being fairly new to the government, understood that what would happen is that our director—at the time it was Craig Slater—would then send the standard notice that the government has to the Ministry of Energy, to their legal services people, who would then know who to send it to in the Ministry of Energy—who was involved in this matter.

**Mr. Peter Tabuns:** So preservation notices would have just been sent to the Ministry of Energy, not to the Premier's office, given—

**Mr. John Kelly:** No, it's entirely possible that that could have happened as well, because at this point in time, the Ministry of Energy would have much more knowledge about who was involved in the matter, apart from the two or three people we heard about. I understand that ultimately these individuals were screened from the file at the Premier's office.

**Mr. Peter Tabuns:** Yes, they were screened. You didn't have anything to do with sending the preservation notice other than—

**Mr. John Kelly:** Just on instruction.

**Mr. Peter Tabuns:** Just on instruction. Did you know who would be sent preservation notices?

**Mr. John Kelly:** No, my understanding was that it would go to the legal services group at the Ministry of Energy, who were directly involved in this, and it would go out from there.

**Mr. Peter Tabuns:** And the preservation notices are quite standard: "Preserve everything in your files, electronic and otherwise, that have bearing on this matter."

**Mr. John Kelly:** Yes, they are standard.

**Mr. Peter Tabuns:** Okay. Would full-scale deletion of emails by people involved in this matter have been a violation of such an order or such an instruction?

**Mr. John Kelly:** I have no knowledge of deletion of anything, sir, so I'd be speaking to a hypothetical question.

**Mr. Peter Tabuns:** And I'm putting it as a hypothetical question because I know you don't have knowledge. But would it have been in violation of a preservation notice?

**Mr. John Kelly:** If a preservation notice had been sent, as requested, and someone got it who was involved in the file, it would be improper to delete the emails or other documents.

**Mr. Peter Tabuns:** And it would have been improper because it puts Ontario's legal case at risk?

**Mr. John Kelly:** It could. It depends on the various sources of documents. As you know, in this day and age, you can get copies of just about anything from anywhere.

**Mr. Peter Tabuns:** Okay. Just, for your information, an affidavit from cabinet office noted that Chris Morley's email was destroyed June 2012; Jamison Steeve's email—he was referenced in this committee—entirely gone August 17, 2012; and Sean Mullin's email, deleted

August, 17, 2012. None of the records from this period exist at this point.

Not that you had any control over it, but if a preservation notice had been sent, an awful lot of information is gone.

**Document 6:** On June 6, Halyna Perun copied you on an email to Malliha Wilson, in which it stated, "That Premier's office is the client."

You were copied on this. What does that mean? Sorry, we go down to the second paragraph, point (1): "That Premier's office is the client."

**Mr. John Kelly:** If I could just have a moment to look at the context.

**Mr. Peter Tabuns:** Sure.

**Mr. John Kelly:** Being relatively new to government at that time, it was not clear to me who the client is. When you're at the Ministry of the Attorney General, you're often asked to represent various ministries. This apparently was the information provided by Halyna to Malliha Wilson, that apparently the Premier's office would be the client.

**Mr. Peter Tabuns:** And did it seem odd to you that the Premier's office was the client as opposed to the Ministry of Energy?

**Mr. John Kelly:** At that stage, with my extremely limited knowledge of government, I really didn't have an opinion at all. I just wanted to get on with doing the job.

**Mr. Peter Tabuns:** And at a later stage, when you understood the workings of government?

**Mr. John Kelly:** At a later stage—my involvement in the matter throughout, as we went through arbitration, was to act for the Ministry of Energy.

**Mr. Peter Tabuns:** So you didn't have any ongoing work done with the Premier's office?

**Mr. John Kelly:** No. Once we completed our interviews with the gentleman I referred to, that was the end of my involvement with the deal.

**Mr. Peter Tabuns:** Okay. In document 8, you're asking about the role of certain staffers. This is the second page of document 8, at the bottom: "We would want a witness statement from each of the people who were involved." Now, you have previously named a number of staff—Sean Mullin, Craig MacLennan, Jamison Steeve. Was there a reason that you, in particular, were interviewing them?

0850

**Mr. John Kelly:** I was asked to be involved in the matter, in the investigation of the allegations.

**Mr. Peter Tabuns:** You note in here that they need to be informed. "Failure to be accurate and honest will not be in their interest in the long run." Can you explain?

**Mr. John Kelly:** It's fairly standard, as far as I'm concerned. Whenever I meet with a witness, I'm simply asking them to give me the truth as they understand it, and obviously, it's not in anyone's interest to have misinformation because it just interferes with the process of getting resolution.

**The Chair (Mr. Shafiq Qaadri):** One minute.



**Mr. Peter Tabuns:** And did you believe that they were open and forthcoming with you?

**Mr. John Kelly:** Because we were at the beginning of the process and we didn't have an opportunity to see any documentation, for example, that would directly contradict at that stage, I had no reason to believe that they were being in any way obstructive with me.

**Mr. Peter Tabuns:** Did you, at a later point, see correspondence or information that indicated there was a contradiction between what they had said to you and what was the case?

**Mr. John Kelly:** Well, as you know, there's a binder here with any number of documents that we've provided. In my experience, witnesses anywhere in this country and other countries see and hear things differently to some degree, so there's always a variation as to what they say occurred and the manner in which it occurred, and that happens with all of us. Other than that, it appeared to me that they were attempting to tell me what occurred.

**Mr. Peter Tabuns:** In document 9—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side, Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair.

Good morning, sir. Thank you for coming. I want to start by asking you about the decision to renegotiate with TransCanada to find an alternative to the Oakville plant. From the documents that I've seen and the testimony that we've heard so far, it's clear that the best path forward, for both the OPA and the government, was to renegotiate an alternative site with TCE rather than rip up the original agreement. Is that your understanding as well?

**Mr. John Kelly:** That's my understanding of what they believed to be the case, yes.

**Mr. Bob Delaney:** Okay. If the government had simply walked away from the contract, was there a significant risk of litigation?

**Mr. John Kelly:** Yes.

**Mr. Bob Delaney:** Okay. Could a potential result be extensive damages awarded against the government in the event of that litigation?

**Mr. John Kelly:** Again, as I've indicated earlier, depending on the documents that were produced, depending on the experts' reports with respect to damages, the result could vary greatly. Obviously, the two parties would be taking different positions on damages, but there's always that risk.

**Mr. Bob Delaney:** Could you expand a little bit on the risks and the damages?

**Mr. John Kelly:** Well, for example, I read in the materials that TransCanada expected a 9% return on its operations, and it believed that the OPA was offering a 4% return with respect to the Cambridge plant. Now, what I know about returns on rates of interest you could put in a thimble, so all I can tell you is that as I understand it from the experts, that's a very significant amount of money, that difference.

**Mr. Bob Delaney:** Okay. So, from what you're saying, it would have been quite difficult for the province

to have avoided litigation if it had simply terminated the contract?

**Mr. John Kelly:** I'm fairly satisfied there would have been litigation, yes.

**Mr. Bob Delaney:** So the company in this case had done nothing legally wrong, and there was a binding contract in place at that time; right?

**Mr. John Kelly:** As I understood it, they were proceeding with their obligations. There were various clauses such as force majeure clauses that extend out over a period of some three years, and I was aware that there was a permitting issue in Oakville. So it wasn't an easy ride going through the process, but they were continuing on to try to complete their obligations.

**Mr. Bob Delaney:** So under the circumstances at that time, really the only way for the government to be sure to avoid running the risks of litigation was to either reach a settlement on damages or to renegotiate a new plant with TransCanada Energy, to find a new project?

**Mr. John Kelly:** Assuming that TransCanada was not in breach of its agreements. There are provisions in the contract that deal with the event of termination and what kinds of claims for damages can be made, for example, section 14. But we certainly did read in the materials that there were, depending on estimates, \$30 million to \$40 million in sunk costs. There were turbines worth, depending on estimates, \$250 million to \$350 million. That's not the kind of thing you would normally walk away from.

**Mr. Bob Delaney:** The concern, then, that TransCanada Energy would initiate litigation is raised numerous times throughout these documents at different stages in the process. It seems, from the documents and from the testimony, that there was a concerted effort by those on the side of the government and the OPA to avoid litigation if they could. Is that your understanding?

**Mr. John Kelly:** That was my understanding.

**Mr. Bob Delaney:** Okay. In your experience in litigation, would it be fair to say that the province would have been likely looking at fairly protracted, difficult and very risky litigation should it have chosen that route?

**Mr. John Kelly:** I would say, with respect to certain claims for damages, there would certainly be considerable risk attached, and it would certainly be prolonged. This would have been a major piece of litigation, undoubtedly, with thousands, if not more, documents to review and witnesses to examine.

**Mr. Bob Delaney:** If TransCanada Energy had initiated litigation against the province over the Oakville plant and had been successful, could we have potentially been looking at greater cost to taxpayers?

**Mr. John Kelly:** I did not get involved in the calculation of damages because, of course, that was a matter for the people who were negotiating the resolution, ultimately. But certainly if their claims as to the cost that they are incurring had been established, there would be substantial damages, if they were successful.

**Mr. Bob Delaney:** Over and above, then, the risk of damages, could you speak to the costs of the process of litigation itself?



**Mr. John Kelly:** In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk. You have witnesses who you think are going to say one thing and it turns out they don't. Evidence that you're given isn't always exactly the way it turns out to be. And you are, in this particular case, risking exposure of extremely sensitive commercial information, for which there would have to be special sealing orders and all forms of injunctions with respect to disclosing because TransCanada's methods of calculating its profits were involved in this process.

**Mr. Bob Delaney:** Okay. Thank you. I'd like to ask you more specifically about negotiating versus tearing up or abrogating a contract. When Deputy Lindsay was here before the committee not too long ago, he said, and I'm going to use his words; this is a bit of lengthy preamble, then: "If you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure...."

He then went on to say, "if you simply throw this into a court proceeding, what happens is you end up paying whatever costs without getting any electrons. So is there a better way to resolve this? TransCanada is a reputable company and our electricity system needs good suppliers out there, so maintaining good relationships with suppliers was part of the consideration. Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do."

Would this be, in your recollection, an accurate representation of the approach the government took at this time to avoid litigation?

**Mr. John Kelly:** I was not involved in the government process of making decisions with respect to the matter. I was simply there to attempt to assess the evidence that was available to me. Those decisions were made by politicians.

**Mr. Bob Delaney:** Okay. In terms of the decision to relocate the Oakville plant—and we're all aware there was strong local opposition and also that the municipality had enacted bylaws to try to stop construction. Chris Breen from TransCanada Energy was here to testify a couple of weeks ago, and he told the committee about all the channels they would have used to deliver on their obligation to build the plant. For one, he had notified the province about the mechanisms they could use to overrule the municipal bylaws that were enacted, and they were fighting the bylaws in a number of courts. Mr. Breen testified that they were confident they would eventually get the bylaws overruled at the OMB, the Ontario Superior Court or Divisional Court, or if needed, they were prepared to appeal decisions to ensure the gas plant got the approvals.

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As an excerpt from his testimony, he said, "What I would say is that TransCanada were confident that they were going to eventually get to build the project on the

Ford lands, but clearly we had some work to do at the Ontario Municipal Board and the various courts that I had mentioned earlier." He also said, "We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that."

Were you aware of the various channels that TransCanada Energy had been using to overturn the bylaws?

**Mr. John Kelly:** No, sir. I wasn't involved in that part of the case.

**Mr. Bob Delaney:** All right. In the event that TransCanada Energy had successfully overturned the bylaws and building permits had been issued, would the force majeure clause have been waived?

**Mr. John Kelly:** Well, force majeure only applies in the event that you're unable to obtain the various permits that are necessary for various reasons set out in the contract.

**Mr. Bob Delaney:** Okay. Had the permits been issued, would the sunk costs have been higher if the decision was made to cancel the plant after construction had started?

**Mr. John Kelly:** Could you ask me that again?

**Mr. Bob Delaney:** Had the permits been issued that TransCanada Energy—

**Mr. John Kelly:** For construction, yes.

**Mr. Bob Delaney:** Yes—would the sunk costs incurred by TransCanada Energy have been higher if the decision to cancel the plant had been made after construction had started?

**Mr. John Kelly:** Well, on the face, it would appear evident that if they were continuing to incur expenses to build the capital structure, they would have more loss. There would be more cost.

**Mr. Bob Delaney:** And presumably those costs, had that have happened, would have—

**Mr. John Yakabuski:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** Is it not possible that Mr. Delaney could actually ask factual questions instead of coming from some hypothetical universe at all times—

**The Chair (Mr. Shafiq Qaadri):** I thank you for your incentive, Mr. Yakabuski.

Please continue, Mr. Delaney.

**Mr. Bob Delaney:** Thank you. We do know that TransCanada Energy was doing everything in their power at the time to get the plant through the approvals process. From your perspective, was having discussions with them on the front end to avoid increased sunk costs and to get a relocated facility out of the agreement prudent and sensible in the circumstances?

**Mr. John Kelly:** Well, again, my role in this matter was simply to gather evidence with respect to the allegations that were made. I wasn't involved in the thought process as to why they had negotiations or what their concerns were with sunk costs, other than what I've told you.



**Mr. Bob Delaney:** Well, I'm asking the questions because in the opinion that you prepared, you reference there being—your words—a “lack of certainty” and possibly different interpretations of one clause or another. When you—

**Mr. John Kelly:** That's actually not my opinion. That was done by a group of people downstairs who are specialists in preparing opinions.

**Mr. Bob Delaney:** Okay. Thank you. Would this then speak to the difficulty of predicting where a court might land on one issue or another?

**Mr. John Kelly:** It all depends on the evidence that's available before the court at the time of the actual proceeding.

**Mr. Bob Delaney:** Could you speak to the benefit of having, then, certainty through negotiation as opposed to the uncertainty of litigation?

**Mr. John Kelly:** In this particular case, a decision was made, obviously, to go through the arbitration process and ultimately to resolve the matter. The benefit of the arbitration is that you know what the terms and conditions are under which you're arbitrating. In this particular case, as you've seen, there were two matters that were agreed upon that would not be raised as defences. So that's one form of certainty. You're unable to determine what the arbitrator will finally decide. It's anyone's estimate based on the evidence available.

The problem with a litigation process would be not only the uncertainties that we talked about, but you don't get to choose your judge in litigation whereas you do get to choose your arbitrator, so at least you have a better sense of the person you're dealing with at the time. After that, it's a matter of how the evidence comes out.

**Mr. Bob Delaney:** Okay, yes, that's a good point. Several witnesses have testified before the committee regarding the meetings between some members of the Premier's office staff with TransCanada Energy. Their testimony lines up with some of the notes that we've seen taken from their interviews with you and with your colleagues on this file. Jamison Steeve told the committee, and I'll use his words, “My discussions with TransCanada were exploratory in nature....” Sean Mullin confirmed by saying, “We were not authorized to ... and we did not engage in” any negotiations. Chris Breen from TransCanada confirmed that they were not negotiating directly with the company.

We know that no offers were made and no deals were reached during these meetings, and the former Deputy Minister of Energy, David Lindsay, testified, “I don't think they actually had a deal. If they had a deal, why are we going through all of this process?” What I'd like to ask you—I'm assuming—is this your understanding as well?

**Mr. John Kelly:** My understanding on the totality of the documentation was that the parties agreed, by October 7, 2010, that the plant would be cancelled and that TransCanada would be entitled to the anticipated financial value of the contract. I haven't seen anything that specifically indicates what that value is, other than to

say that it appears from the documentation that the parties hoped that another plant would be the equivalent value of the undertaking at Oakville.

**Mr. Bob Delaney:** Okay. Mr. Steeve and Mr. Mullin were later screened off because of the high risk of litigation with the company. Is that correct?

**Mr. John Kelly:** It's what I understand.

**Mr. Bob Delaney:** Okay. In fact, that's what former secretary Shelly Jamieson told the committee. She said, “This decision was made because their earlier involvement with the proponents made them potential witnesses in threatened litigation resulting from the decision to cancel that particular contract,” which, I gather, is what you've been saying as well.

**Mr. John Kelly:** Yes.

**Mr. Bob Delaney:** Okay. There has been a bit of discussion around the terms “keeping whole,” with regard to the proponent. What does that statement mean to you?

**Mr. John Kelly:** I think I've indicated what my understanding of that statement is.

**Mr. Bob Delaney:** Okay.

**Mr. John Kelly:** It's simply that the discussions that appeared to have been under way between the parties had as their object the ability, if possible, to find another plant or location where, for example, the turbines could be used and another generation facility could be built to be the equivalent of what they anticipated they would be doing in Oakville.

**Mr. Bob Delaney:** Okay, thank you. Mr. Tabuns earlier asked Chris Breen about this statement. The Premier's office staff have said a number of times that they were only in meetings with TransCanada Energy to listen to a concerned stakeholder and did not promise to keep anyone whole. Mr. Breen confirmed that this statement was indeed used by TransCanada Energy executives. So the transcript, in part, was Mr. Tabuns saying, “One matter that comes up with us fairly regularly is this whole question of keeping TCE whole or close to whole. Was this something that was put forward ... from the Premier's office?”, to which Mr. Breen from TransCanada Energy said, “This was put forward by TransCanada.... Our executives who came to that meeting were very clear. They said, ‘We have a contract. We're seriously advising you against cancelling it, but if you do cancel it, we expect to be kept whole.’” Was that consistent with your interviews with Sean Mullin, Jamison Steeve and Craig MacLennan when they were screened off the files?

**Mr. John Kelly:** They advised me on a number of occasions that there were statements by TransCanada that they expected to be kept whole with respect to the contract, yes.

**Mr. Bob Delaney:** Okay. On the topic of these interviews—by the way, how am I doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** Three minutes or less.

**Mr. Bob Delaney:** Thank you. On the topic of these interviews, you spent quite a bit of time with these three individuals, discussing their meetings with TransCanada Energy?



**Mr. John Kelly:** I would have thought that the meetings were about an hour each.

**Mr. Bob Delaney:** Okay. Were the individuals co-operative in these meetings?

**Mr. John Kelly:** I have no reason to think they were being unco-operative.

**Mr. Bob Delaney:** Did they provide you with all the information you asked for?

**Mr. John Kelly:** They gave us the answers to the questions we asked.

**Mr. Bob Delaney:** Okay. We've heard a lot about the possibility of these negotiations ending up in arbitration if discussions had broken down. What was the outcome?

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**Mr. John Kelly:** The parties ultimately agreed to arbitrate the issue of the damages, if any, suffered by TransCanada as a result of the cancellation of the plant.

**Mr. Bob Delaney:** Chair, the next set of questions I have would require a little bit more time than what remains, so we'll stand down the remainder of our time.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Delaney, just before I offer the floor to the PC side, I'd just like to mention that I do have to join with Mr. Hudak and Mr. Yakabuski in inviting you to please stay on the straight and narrow, so I'd invite you to listen to both of our opinions. With that, I'd offer the floor to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. Good morning, Mr. Kelly.

**Mr. John Kelly:** Good morning, sir.

**Mr. Victor Fedeli:** Thank you for being here. You have a package from our side as well?

**Mr. John Kelly:** I have something called "PC DOC."

**Mr. Victor Fedeli:** You've got them. Under PC doc. 1—and sorry, Rob, that we continue to call it that. You'll see in the first paragraph, second sentence—this is an email from you to Halyna Perun: "In essence, they confirm that the government cancelled the contract and communicated that fact to TransCanada before the Minister of Energy was advised. Apparently the chief of staff (or equivalent title) in the PO told one [of] TransCanada's senior people at the time they indicated the plant would not proceed" and "that TransCanada would be 'made whole' as to damages."

You're sharing this information with legal counsel in the Ministry of Energy and Infrastructure. Would this have been the first time, in your opinion, that Halyna Perun would have understood that the government cancelled the contract, that someone in TransCanada said they would be made whole and that her minister wasn't aware of it?

**Mr. John Kelly:** I had no idea what knowledge Halyna had. I had met her very briefly before this as my representative—

**Mr. Victor Fedeli:** You were new at this time; right?

**Mr. John Kelly:** Pardon me?

**Mr. Victor Fedeli:** You were new at this time?

**Mr. John Kelly:** Yes.

**Mr. Victor Fedeli:** Okay.

**Mr. John Kelly:** New to the file, yes, and a year in the position, yes.

**Mr. Victor Fedeli:** Two paragraphs down, it says that "negotiations as to damages are 'an unmitigated disaster.'"

The next paragraph says, "They have indicated"—this is TransCanada—"that the problem is that Colin Andersen at OPA is being very confrontational and that he and whoever is advising him doesn't know anything about the proper calculation.... Apparently counsel are not involved in these discussions."

Would you know if Colin Andersen was being confrontational because he knew this was a bad deal that was being proposed and he didn't want to go ahead with that? Was he being directed by the government as to what to propose?

**Mr. John Kelly:** I have no idea, sir, because this is May 25, the first time I had a conversation about the file.

**Mr. Victor Fedeli:** Okay. We've got correspondence coming up that you and I will talk about in a couple of minutes that will clarify that, I'm quite positive.

**Mr. John Kelly:** Thank you.

**Mr. Victor Fedeli:** The next document we see is June 2. Go to page 3 of that. It's page 3 of four, right at the top: "TCE responds angrily." I'm not sure who took the notes, but I think this is Halyna Perun, says, "I have MB"—I presume that is Michael Barrack—"says TCE 'blew a gasket'—we already have a deal—go talk to your bosses."

Do you have any understanding of what they were referring to here?

**Mr. John Kelly:** I did not at that time.

**Mr. Victor Fedeli:** Now do you know?

**Mr. John Kelly:** I have an understanding.

**Mr. Victor Fedeli:** What do you feel that understanding is?

**Mr. John Kelly:** It appears that on October 5, there was a meeting with the Premier's office, Mr. Mullin and Mr. Jamison Steeve, where again there were discussions about being kept whole and so forth and the fact that a statement was going to come out terminating the Oakville gas plant and that TransCanada would be receiving a letter that they had been asking for. Then I understand that the TransCanada representatives went to meet with the minister and perhaps an assistant—I can't recall—at which point, apparently TransCanada got the sense that the minister was saying, "We'll let you know in a number of months what will happen. Thank you for your co-operation." That was not the way they understood the discussions that had taken place in the Premier's office, and they reacted with some irritation.

**Mr. Victor Fedeli:** Let's talk about the letter you were referring to. This is a letter from the OPA to TransCanada.

**Mr. John Kelly:** Yes.

**Mr. Victor Fedeli:** Was the OPA, in your understanding, satisfied with writing that letter? You may or may not find that here in this particular chronology.

**Mr. John Kelly:** No, there's nothing in here that I am aware of about that. There may be something later.

**Mr. Victor Fedeli:** Okay. A little bit down you'll see, "Don't know if the OPA board approved the letter." Do you know anything about that?

**Mr. John Kelly:** No, I don't.

**Mr. Victor Fedeli:** Okay. That leads me to my question. What legal authority would the province of Ontario or the Premier's office have to instruct the OPA to terminate a contract and write that letter?

**Mr. John Kelly:** Fortunately for me, I have no idea. I literally don't—

**Mr. Victor Fedeli:** Fortunately for you?

**Mr. John Kelly:** I understand that there has been evidence before this committee that if the government wasn't onside with this project going forward, there would be insurmountable obstacles. That is the nature and extent of my knowledge of public law.

**Mr. Victor Fedeli:** That's fair enough. Fortunately, that you don't know is a great answer, by the way. It saves a lengthy discussion about the fact that they have no authority to instruct the Ontario Power Authority.

So you don't know anything about the Ontario Power Authority board's involvement or approvals along the line? Would you have any knowledge of that whatsoever?

**Mr. John Kelly:** Other than what I read from time to time about the board. There are a few memos that I see about the board. I had no involvement with them or any—

**Mr. Victor Fedeli:** What would you have read from time to time about the position of the board?

**Mr. John Kelly:** I'd have to look at the actual documents, and if they're in here, I'm happy to do that. I just recall that there had to be, as I understood it, reference of this October 7 letter to the board at some point. Whether there was and how it happened, I wasn't involved in that.

**Mr. Victor Fedeli:** On PC doc. 3, we're into the notes of the Mullin meeting.

**Mr. John Kelly:** Yes, sir.

**Mr. Victor Fedeli:** This will bring us to page 4 of 26, PC doc. 3, 4 of 26.

**Mr. John Kelly:** Yes.

**Mr. Victor Fedeli:** In your estimation—you know, somewhere down there it talks about—this is a quote from Mullin's notes, I believe: "We said 'we know you have a contract and we know you would expect to keep the value of the contract.'"

In your opinion, who offered to make TransCanada whole? In your opinion now, knowing today, maybe not in May when you first suited up for this, but today, after all that has been said and done, how would TransCanada have felt they had a position that they would be made whole?

**Mr. John Kelly:** I can't speak to what TransCanada thought or why they thought it. All I can tell you is, based on the notes that I have, the indication was that there was a desire, if possible, to keep them whole in the sense of giving them an alternative plant.

**Mr. Victor Fedeli:** And who would that have come from?

**Mr. John Kelly:** My understanding is that any discussions in that regard came from instructions Mr. Steeve and Mr. Mullin would have received from the Premier and from the minister. That's what they told us.

**Mr. Victor Fedeli:** In Steeve and Mullin's negotiations with TransCanada, page 6 of 26, about halfway down: "Pourbaix said that they expected to be kept whole or close to whole." Here's where it goes on to say, "I remember thinking later that he was negotiating against himself"—obviously, rather than with them—"by saying 'close to whole.' Our answer was 'we hear you,' in the sense that 'yes, we know that's what your expectation is.'"

They were feeling pretty good at that moment in respect to—instead of TransCanada negotiating with Mullin and Steeve, they say he was negotiating against himself by first saying he wants to be kept whole and then offering "close to whole." Would you agree that is what that refers to or implies?

**Mr. John Kelly:** I'm not in a position to do so. I can only tell you that this is what we recorded him saying at the time, telling us what Mr. Pourbaix had said.

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**Mr. Victor Fedeli:** So who is telling this at the moment? Who is saying this?

**Mr. John Kelly:** I think this was our meeting with Mr. Mullin.

**Mr. Victor Fedeli:** Up at the top, it says, "DK notes of Mullin meeting."

**Mr. John Kelly:** That's Darrell Kloeze, one of our lawyers who was taking the notes.

**Mr. Victor Fedeli:** So he took the notes of Mullin talking to you and others. Can you just repeat that, then? After "Any discussion about what should be in the letter," just that—

**Mr. John Kelly:** I'm sorry, you lost me as to where you are.

**Mr. Victor Fedeli:** Still that same one that I was reading, about halfway down: "Any discussion about what should be in the letter?"

**Mr. John Kelly:** Oh, yes. Well, as you can indicate, and it speaks for itself, he said, "they expected to be kept whole or close to whole." And as you said, Mr. Mullin advised us at the time that he thought he was negotiating against himself by saying that.

**Mr. Victor Fedeli:** As opposed to negotiating with Mullin and Steeve at that moment.

**Mr. John Kelly:** If that's what he was doing.

**Mr. Victor Fedeli:** Okay.

**Mr. John Kelly:** And to be fair to them, he did say throughout these notes that they were not there to negotiate; they were there to listen.

**Mr. Victor Fedeli:** However, he says that he was negotiating against himself, as opposed to negotiating with Mullin and Steeve at that point?

**Mr. John Kelly:** Well, he didn't say that. He said, "I remember thinking later that he was negotiating against himself by saying 'close to whole.'" That's all he said.



**Mr. Victor Fedeli:** As opposed to with Mullin and Steeve at that point.

The next page, page 6 of 26: This is “Mullin to some excerpts from Breen’s notes,” it says. “Pourbaix says he wants to keep TC whole: yes, he said that.” Where would this have been said, then? Can you understand where that would have been said?

**Mr. John Kelly:** Can I just have your indulgence for a moment.

**Mr. Victor Fedeli:** About one, two, three, four—this is the fifth dash down, after “Refers”—

**Mr. John Kelly:** Yes. This is the October 1 meeting. It refers to it above. There were two meetings in particular: October 1 and October 5. This is apparently the October 1 meeting, where Mr. Pourbaix is alleged to have said—

**Mr. Victor Fedeli:** To who?

**Mr. John Kelly:** Well, to Mr. Mullin, and I believe Mr. Steeve was there with him. I don’t know if anyone else was.

**Mr. Victor Fedeli:** Okay. And what does it say? What does that sentence say?

**Mr. John Kelly:** It says, “Pourbaix says he wants to keep TC whole,” and the answer from Mr. Mullin was “yes, he said that.”

**Mr. Victor Fedeli:** So that’s Mr. Mullin saying, “yes, he said that”?

**Mr. John Kelly:** Yes.

**Mr. Victor Fedeli:** Okay. If you go to PC doc. 3, page 9 of 26, we’re at the Jamison Steeve testimony now, according to that page.

**Mr. John Kelly:** Just a point of clarification: There was no testimony, just taking notes.

**Mr. Victor Fedeli:** Oh, the notes. So 9 of 26 indicates it was Jamison Steeve; 11 of 26—this is about a third of the way down; it’d be the third reference, now. “Refers Steeve to excerpts from Breen notes,” the second dash: “if we have to back away from the contract, the money that you have already put into it becomes a political liability.” Would that have been Steeve saying that?

**Mr. John Kelly:** Yes, sir.

**Mr. Victor Fedeli:** Okay. Down three more dashes: “Five people, no public servants, will make the decision.” Do you know who the five are?

**Mr. John Kelly:** No.

**Mr. Victor Fedeli:** Okay. The next one: “political problem with political solution”—who’s saying that?

**Mr. John Kelly:** We were quoting to Mr. Steeve from Mr. Breen’s notes, and his response was, “that seems in line with what I might have said,” and goes on from there.

**Mr. Victor Fedeli:** So that would be Steeve who might have said that—

**Mr. John Kelly:** That was my understanding.

**Mr. Victor Fedeli:**—“political problem with political solution.”

The next sentence from the July 15: “presentation to political staff.” What does that imply?

**Mr. John Kelly:** I don’t know.

**Mr. Victor Fedeli:** Okay. That’s fair.

Flip a couple of pages to 13 of 26. We’re still at the Steeve meeting. We’re down one, two, three, four—the fifth dash after “Was there any discussion.” Is this Steeve saying, “they had rights under the RFP, they would want to be made whole or ‘close to whole’”?

**Mr. John Kelly:** Can I just have a moment to read above?

**Mr. Victor Fedeli:** Yes.

**Mr. John Kelly:** My understanding of this is that he is advising them that the contract’s not going to go forward, because they apparently “did not need the power,” is what he says here. Then we asked if there was any discussion about what TransCanada would do, and his response was that TransCanada had rights under the request for proposal, the contract, and “they would want to be made whole or ‘close to whole.’”

**Mr. Victor Fedeli:** Okay. The next page, 14 of 26, third dash: “They wanted to be kept whole or close to whole.” Again, who is saying that?

**Mr. John Kelly:** Your indulgence for a moment.

My understanding is that these are statements being made to Mr. Steeve by the people from TransCanada. It looks as if they’re talking about some difficulties in the US with public pushback on their projects and the fact that the contract was being cancelled wasn’t a shock. They didn’t want to resort to legal action—they had a long history of investing in Ontario—but they wanted to be kept whole or close to whole.

**Mr. Victor Fedeli:** Okay. Page 15 of 26, the second line in, “We were told that TC received assurances that they would receive the value of the contract, and TC would lay low. They wanted a letter from us.” Again, is that Steeve?

**Mr. John Kelly:** I understand it is, being told by TransCanada that they were given assurances they’d receive the value of the contract.

**Mr. Victor Fedeli:** Page 17 of 26: Does this acknowledge that this is now the Ben Chin conversation?

**Mr. John Kelly:** Yes, these are the notes from Ben Chin’s conversation.

**Mr. Victor Fedeli:** Okay. Page 18 of 26—some of this is old news to us in the room here, but I do need to hear it from you. Page 18 of 26, I think we already covered this, but this is now Ben Chin corroborating the same discussion. It says, “Duguid gave them a political spiel. TC apparently blew a gasket and said ‘we got a deal with the PO, go talk to them.’” Is that Ben Chin referencing this?

**Mr. John Kelly:** If I could just have your indulgence for a minute.

I think he indicates in the first bulleted paragraph that we said to him, “We thought you might be the person who spoke to” Mr. “Steeve.”

**Mr. Victor Fedeli:** Yes.

**Mr. John Kelly:** He said, “No, but I do know that story second-hand, Breen told me later on,” so I’m not sure that he knew it at the time.

**Mr. Victor Fedeli:** That’s fair. Down at the bottom of page 18, talking about article 14 of the contract, it says,

“Mike Lyle” OPA “was having trouble with the ‘kept whole’ language.” Do you know what Mike’s difficulty with that was?

**Mr. John Kelly:** I didn’t speak to him directly about that.

**Mr. Victor Fedeli:** Do you know now?

**Mr. John Kelly:** I have a belief.

**Mr. Victor Fedeli:** What is your belief? What is your—

**Mr. John Kelly:** I think the problem is that article 14, of course, appears on its face to prohibit recovery of net profits.

**Mr. Victor Fedeli:** So why would you think they were instructed to recover net profits if article 14 doesn’t instruct them to do so—

**Mr. John Kelly:** Well, I have no knowledge.

**Mr. Victor Fedeli:** —or instructs opposite of that?

**Mr. John Kelly:** I have no knowledge of that.

**Mr. Victor Fedeli:** So article 14 clearly indicates that they don’t have any rights to those profits?

**Mr. John Kelly:** On its face, that’s what it says. I know that TransCanada didn’t accept that position, but that’s what it says.

**Mr. Victor Fedeli:** And Mike Lyle, with the OPA, is concerned that when they write that letter, they will tie OPA’s hands and commit them to those profits; is that correct?

**Mr. John Kelly:** I have no idea. I didn’t speak to him about—

**Mr. Victor Fedeli:** Have you ever seen the letter?

**Mr. John Kelly:** Which letter? Sorry.

**Mr. Victor Fedeli:** The October letter that OPA actually issued.

**Mr. John Kelly:** The October 7 letter?

**Mr. Victor Fedeli:** Yes.

**Mr. John Kelly:** Yes, I have.

**Mr. Victor Fedeli:** And does it commit to those extra profits?

**Mr. John Kelly:** It doesn’t in fact address it that way. It says that they understand that they will receive the anticipated financial value of the contract, whatever that is.

**Mr. Victor Fedeli:** Is that in the spirit of article 14 or opposite of that?

**Mr. John Kelly:** Well, it appears that a government decision was made with respect to the resolution of this problem. I can’t speak to why that decision was made. Article 14 says what it says.

**Mr. Victor Fedeli:** I’m sorry?

**Mr. John Kelly:** Article 14 says what it says on its face.

**Mr. Victor Fedeli:** So article 14 says, “Not necessarily”; the government says, “Do it”; and OPA put it in the letter. Is that a brief summary?

**Mr. John Kelly:** Article 14 simply talks about whether they’re entitled to loss of profits in the event of a breach of the contract, and after that—

**Mr. Victor Fedeli:** And what was the summation of article 14?

**Mr. John Kelly:** It essentially says that if there is a breach of the contract, neither party is entitled to, among other things, loss of net profit.

**Mr. Victor Fedeli:** So article 14 says—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Thank you, Chair.

Article 14 says that in the event the contract doesn’t proceed, neither party is entitled—

**Mr. John Kelly:** To net loss of profits.

**Mr. Victor Fedeli:** —to net loss of profits. The government instructs OPA to make the offer that does indeed give those profits to TransCanada—not necessarily profits. What’s the actual wording?

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**Mr. John Kelly:** It’s “the anticipated financial value.”

**Mr. Victor Fedeli:** Anticipated financial value. Okay. Page 19 of 26: We’re now at Craig MacLennan.

**Mr. John Kelly:** Yes, sir.

**Mr. Victor Fedeli:** Halfway down, the little check mark—not the big check mark; the little one—“we are not lawyers, we did not realize that we were making a significant jump from the contract.”

**Mr. John Kelly:** Yes, sir.

**Mr. Victor Fedeli:** Is that referring at all to this as well?

**Mr. John Kelly:** Yes. At the top of the page, we asked him, “How did we get from the wording in the contract, that assumes no damages”—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Mr. Kelly. We’ll be back.

**The Chair (Mr. Shafiq Qaadri):** To Mr. Tabuns of the NDP, 20 minutes—or 10 minutes. Sorry.

**Mr. Peter Tabuns:** Thank you. Actually, do you want to just finish your answer there?

**Mr. John Kelly:** I was just going to say that we asked the question, “How did we get from the wording in the contract, that assumes no damages are available, to the wording in the termination letter?” And this was a part of his response.

**Mr. Peter Tabuns:** And that is, “we are not lawyers, we did not realize that we were making a significant jump from the contract”?

**Mr. John Kelly:** That’s correct.

**Mr. Peter Tabuns:** When the word “we” is used, we’re talking about the Premier’s office staff?

**Mr. John Kelly:** Mr. MacLennan is with the Minister of Energy.

**Mr. Peter Tabuns:** Yes.

**Mr. John Kelly:** He’s chief of staff.

**Mr. Peter Tabuns:** Yes, he seemed to be working with the group of Jamison Steeve, Sean Mullin, Ben Chin.

**Mr. John Kelly:** My only understanding was he was the chief of staff for the Minister of Energy, and we met with him separately.

**Mr. Peter Tabuns:** On that same page, Craig MacLennan is quoted as saying, “decision made to offer



up in the letter some language that would satisfy" TransCanada "and stave off a lawsuit."

**Mr. John Kelly:** I'm just trying to find it.

**Mr. Peter Tabuns:** That's the large check mark that Mr.—

**Mr. John Kelly:** Yes, that's what he said.

**Mr. Peter Tabuns:** So effectively at this point, even if they had not previously said, "We'll keep you whole," when they were giving instructions on writing the letter to the OPA, they abandoned a very big chunk of the contract that would have protected the OPA and Ontario's interest.

**Mr. John Kelly:** I can't speak to that from the wording of this statement that he made.

**Mr. Peter Tabuns:** The only thing we can conclude from this is "we are not lawyers, we did not realize that we were making a significant jump from the contract."

**Mr. John Kelly:** That's what he said.

**Mr. Peter Tabuns:** Okay. Going back to the filed documents—

**Mr. John Kelly:** Your documents?

**Mr. Peter Tabuns:** Ours, yes. Again, this ground of Jamison Steeve's notes. It's document 9, then go through to the—

**Mr. John Kelly:** That's Craig MacLennan, according to mine.

**Mr. Peter Tabuns:** I'm sorry?

**Mr. John Kelly:** The "9" at the top right corner says "Craig MacLennan." I thought you wanted—

**Mr. Peter Tabuns:** Yes, I'm sorry. It does, but there are all of the interview notes in here—

**Mr. John Kelly:** I see.

**Mr. Peter Tabuns:**—and if you go through the interview notes, you will come to the meeting with Jamison Steeve.

**Mr. John Kelly:** I have it.

**Mr. Peter Tabuns:** Page 7. Oh, no, I'm sorry. Page 6 first.

**Mr. John Kelly:** Yes.

**Mr. Peter Tabuns:** A third up from the bottom: "Did any of you say 'yes, we will keep you whole'?" Jamison Steeve here is saying, "I can't believe either Sean Mullin or I said 'sure we will keep you whole.'" Do you see that?

**Mr. John Kelly:** I do.

**Mr. Peter Tabuns:** The next page—effectively, you're going back again and asking them the same question, or whoever was doing—BK was perhaps asking the questions.

**Mr. John Kelly:** No, I'm responsible.

**Mr. Peter Tabuns:** You're responsible. Do you sometimes go back and ask the same question a few times to see what kinds of answers you get?

**Mr. John Kelly:** I have done that from time to time, sir.

**Mr. Peter Tabuns:** You have. And you may have done it on this occasion. Sort of mid-page: "As far as giving them an assurance that they would be kept whole?"

"I remember Alex Pourbaix saying it"—I assume this is your notes of Jamison Steeve's words—"I might have repeated it, an acknowledgment but they might have thought I had direction."

**Mr. John Kelly:** Yes.

**Mr. Peter Tabuns:** In some ways, I see this as, "Oh, maybe I did say 'you will be kept whole.'" How did you interpret his comment?

**Mr. John Kelly:** I, at the time, didn't interpret it at all. I was just recording what he was saying to us. Subsequently, of course, more information became available. As you can see from below, he also says, "We would try to negotiate alternative sites, and nobody wants to litigate."

**Mr. Peter Tabuns:** Correct.

**Mr. John Kelly:** So again, that assisted my impression on the balance of the documentation that an effort was going to be made to try to find an alternative site that would be of equivalent value.

**Mr. Peter Tabuns:** When I look at the note that was just brought up about Ben Chin, it's pretty clear that where the chief of staff to the Minister of Energy was going and where the principal private secretary of the Premier was going was, "We're going to give you a deal that makes up for cancellation of this one."

**Mr. John Kelly:** Well, in fairness, Mr. MacLennan, in his notes, indicated he didn't think that they were going to get a contract of equivalent value. He actually said that the Cambridge plant was not the same value as the Oakville one, but he understood that that might be acceptable to TransCanada. That was his evidence—his statement to us, pardon me.

**Mr. Peter Tabuns:** Although, in the end, the language that was given in the letter to TCE, TransCanada, by the Ontario Power Authority set the stage for TransCanada to say, "We are going to be kept whole."

**Mr. John Kelly:** That was their position, yes.

**Mr. Peter Tabuns:** In document 11—this is your email to a number of people in justice. The main paragraph, second line: "I think it could be argued that the govt. offered to make TCE whole when it terminated the Oakville plant ... by finding another gas plant from which it could make the profits and in return, TCE promised not to sue, issue a press release or otherwise embarrass the govt." On that basis, do you believe the government offered to make TCE whole?

**Mr. John Kelly:** No. What we were talking about was a discrete legal issue, and the legal issue was whether or not, as a result of the alleged conversations, it was possible to argue that a second contract had been entered into—in other words, that the first one had gone by the wayside and a second one came up. I, of course, came up with this brilliant concept of a second contract, and I was promptly put in my place by the people downstairs who I mentioned before, who actually know what they're talking about. So they dealt with that in the opinion that has been sent to the committee.

**Mr. Peter Tabuns:** But when you say "could be argued," would that be language that would indicate

before a judge that the other side would have a strong position to argue?

**Mr. John Kelly:** No. This is something that I was thinking might be available to the government side with respect to a second contract. Apparently, I was wrong.

**Mr. Peter Tabuns:** Okay. In the DK notes, Mr. Kloeze, document 9, page 8 of meeting with Steeve—

**Mr. John Kelly:** I'm just looking for the document. Oh, I see, Steeve, yes. Page 8, did you say?

**Mr. Peter Tabuns:** Page 8 of the Jamison Steeve notes.

**Mr. John Kelly:** All right. Yes, sir?

**Mr. Peter Tabuns:** Steeve says that he was unable to make a financial offer.

**Mr. John Kelly:** Can you just direct me to—

**Mr. Peter Tabuns:** “Did you make an offer of \$650 million?”

“no, that would have required approval from the Premier.”

**Mr. John Kelly:** Yes.

**Mr. Peter Tabuns:** At the same time, yesterday, Michael Killeavy, senior OPA official, indicated Craig MacLennan was instructing the OPA to make two offers, one on March 28, 2011, and one on April 21, 2011. Does it make sense to you that Craig MacLennan was getting the OPA to make these offers; Jamison Steeve didn't seem to feel he had authority to do this?

**Mr. John Kelly:** I actually had no knowledge of any of those matters, I'm afraid.

**Mr. Peter Tabuns:** None?

**Mr. John Kelly:** No.

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**Mr. Peter Tabuns:** Okay. Last section, document 7: These are the first two pages of the arbitration agreement between TransCanada Enterprises and the government of Ontario.

**Mr. John Kelly:** Yes, sir.

**Mr. Peter Tabuns:** The third “whereas”: “Whereas respondents have agreed have agreed to pay TCE its reasonable damages arising from the termination of the CES contract, including the anticipated financial value of the CES contract”—effectively, this is saying, “We're making you whole,” is it not?

**Mr. John Kelly:** No, it says what it says on the face of the document. It would have to be determined what the anticipated financial value was, first of all, and then a calculation would be done by experts as to how much that money really was. Then, an arbitrator would have to decide between two competing views as to what that amount was. There was considerable uncertainty at the time I was last involved as to how much the loss was.

**Mr. Peter Tabuns:** But from the beginning, one of the key lines has been “the financial value of the CES contract.” It's recognized that that's what is going to come to TransCanada.

**Mr. John Kelly:** The anticipated financial value.

**Mr. Peter Tabuns:** Yes.

Then, in the sixth and seventh paragraphs—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. That's 10 minutes; sorry for not giving you the one-minute warning. Mr. Delaney.

**Mr. Bob Delaney:** Just to follow up on some of the earlier questions, most of them by Mr. Tabuns, pertaining to a document preservation notice: Do you have any personal knowledge of whether a preservation notice was sent to the people in question?

**Mr. John Kelly:** No.

**Mr. Bob Delaney:** Did you see a document preservation notice?

**Mr. John Kelly:** I don't recall that we did, because we then subsequently got involved in the extensive negotiations with respect to arbitration.

**Mr. Bob Delaney:** Okay, so would it be fair to categorize conversations around a preservation notice as being hypothetical?

**Mr. John Kelly:** I don't think that they were hypothetical. I think that the intention was that if this matter was going to go to litigation, we were going to be preserving documents, and we'd also have to preserve them for the purpose of arbitration. But as it turns out, of course, the arbitration was only on the issue of what the damages were.

**Mr. Bob Delaney:** Okay. In the memorandum written by the Crown Law Office, it talks about different approaches to interpret article 14. You testified earlier that TCE, for instance, did not interpret it in the same way as the Ontario Power Authority. Would it be fair to say that such a clause could be interpreted differently by various parties?

**Mr. John Kelly:** I didn't have the opportunity to find out what TCE's interpretation of article 14 was, or whether they were going to take the position that it was somehow waived altogether and therefore not applicable, because we got into the arbitration, which didn't involve article 14; it just involved the issue of damages.

**Mr. Bob Delaney:** Okay. I believe Mrs. Albanese has a few questions.

**The Chair (Mr. Shafiq Qaadri):** Mrs. Albanese?

**Mrs. Laura Albanese:** I want to just ask a few questions on the topic of commercially sensitive information. As you may be aware, in May 2012, Mr. Leone and the estimates committee asked for all correspondence within a specific time frame in the Ministry of Energy and the OPA, related both to the Oakville and Mississauga plants. At the time that the motion was passed, complex and sensitive negotiations were ongoing with both companies.

I would like to ask you: If the OPA's and the province's negotiation position was prejudiced because the company had access to confidential and privileged information, what would that have meant for the taxpayers of Ontario?

**Mr. John Kelly:** I can't speak to what it would have meant for the taxpayers. I can only tell you that at the time I was involved in the matter, when we were under way in the arbitration, the parties had agreed in the arbitration to keep all information in the arbitration



confidential. One of the reasons was that extremely sensitive financial information from TransCanada, and possibly from the Ontario Power Authority, would be exchanged in this arbitration in order to come to a determination as to what the value was, if any, of the loss suffered by TransCanada.

If that information became public, so that the competitors of TransCanada had access to it, it's conceivable that it could have done great damage to the corporation.

**Mrs. Laura Albanese:** Okay. We asked the same question to the former secretary of cabinet, Shelly Jamieson, when she testified. She said, "It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal, and sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I would have been concerned about that in any negotiations. We also asked the Auditor General, and he responded that it's like in poker: You don't show the people around the table your cards. Would you agree with those comments?"

**Mr. John Kelly:** The position that's taken in an arbitration is that the parties agree to have an issue between them decided by an arbitrator, and in my experience, it's most often based on production of documents and expert evidence as to damage. All of these sensitive documents would be on the table in the arbitration, but with the knowledge that they wouldn't be exposed to public review because, for example, as I understood it, the way in which TransCanada calculates its profits was contained in that information.

**Mrs. Laura Albanese:** So in effect, it would have been a significant risk to the taxpayer if those documents had been made public before the two deals were finalized.

**Mr. John Kelly:** I certainly think that was a concern that was expressed by a number of people at the time.

**Mrs. Laura Albanese:** Generally speaking, as a lawyer, can you tell the committee what you think the importance of solicitor-client privilege is?

**Mr. John Kelly:** How much time do you have?

**The Chair (Mr. Shafiq Qaadri):** Four minutes.

**Mr. John Kelly:** As a street lawyer, I must tell you that I gained a few years in my life when I heard about the auditor and the committee on estimates and this august body. Solicitors are not in the habit of speaking about their clients' affairs to anybody, so to learn that there was this power to produce these documents before this committee was a revelation, to say the least.

We in the profession think that the preservation of solicitor-client privilege is essential to the ability to communicate with your client and act in its or her or his best interests.

**Mrs. Laura Albanese:** Thank you. I guess that ends my questions, unless Mr. Delaney has any further ones.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney?

**Mr. Bob Delaney:** Just something, Chair, that I'd like to comment on. Mr. Fedeli had questioned the witness

about what Mr. Duguid knew as of October 5 regarding the cancellation of the Oakville plant. Mr. Duguid, in fact, had testified before the committee. He and his office were absolutely part of the decision and the ongoing announcement, but what he testified is that he had worked closely with the Premier's office on that file. When he described why he stayed so—

**Mr. John Yakabuski:** Is there a question here, Mr. Delaney?

**Mr. Bob Delaney:** I'll get to it, thanks, and I don't need any help.

When he described why he had stayed so high-level during the October 5 meeting, Minister Duguid said, "I, as minister, meeting with the CEO of TransCanada ... was not at liberty to disclose the fact that, 48 hours later, we were about to make an announcement. That's not to say that the CEO of TransCanada did not have some information that he may have obtained or may have received from the Premier's office, and that would have been fine. But as minister, I did not want to get on to that slippery slope of giving information to the CEO before it would be appropriate."

Chair, I thought that was appropriate to put on the record with regard to some of the earlier comments made. We are done with our time. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Yakabuski, for your continued help in this committee in its deliberations.

Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair; much appreciated. I always enjoy a long tale in revisionist history myself, Mr. Kelly, but let's stick to the facts.

We're still on PC doc. 3. I'm now on page 26 of 26. I was finishing up with the Ben Chin notes that DK took.

**Mr. John Kelly:** Yes, sir, I have it.

**Mr. Victor Fedeli:** Halfway down page 26: "Do you know what the words 'kept whole' were supposed to mean? ...

"I was dealing mostly with Sean Mullin from the PO, and Jamison Steeve to some extent

"Both Jamison and Sean told me about their conversation with Alex Pourbaix, and Pourbaix wanted to be kept whole or close to whole."

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Let's jump right down to the bottom of that page. I'm reading from DK's notes. "We have some understanding that there were meetings on Oct. 1 and 5, and TC"—TransCanada—"saying 'you promised to keep us whole.' Did Jamison or Sean say to you what their response was?"

The answer is:

"—my understanding was that they agreed" TransCanada "should be kept whole."

The next sentence was:

"—I was told that by Sean Mullin."

Is that an accurate reading of what is in this record?

**Mr. John Kelly:** To the best of my knowledge.

**Mr. Victor Fedeli:** Thank you. PC doc. 4.

**Mr. John Kelly:** I have it.



**Mr. Victor Fedeli:** In bold it says, “Page 3 paragraph 6 ‘—that he may have said words to the effect that we (the government) will try to keep you whole—’”

Was that a change? Is what is in bold a change?

**Mr. John Kelly:** What it is is there was a chronology. I think it’s produced to the committee. It may be in these documents somewhere. I was commenting on the draft of the chronology from my memory of what was actually said. We all tried to go through our notes and determine the exact wording. But I was just giving him my observations.

**Mr. Victor Fedeli:** PC doc. 5, there’s that area, (1), that talks about the OPA not directly engaging in direct discussions with TCE prior to October 5. Then it says, “Therefore, the ‘October negotiations’ have to be broken down into two stages: (1) the two meetings that the PO had with TCE on October 1 and 5, and whatever agreement was reached there, and then (2) the intense negotiations around the wording of the termination letter between OPA and TCE between October 5 and 7, which crystallized the agreement reached with the” Premier’s office “and resulted in the termination letter.”

The next paragraph, second sentence: “The ‘made whole’ language comes from meetings between ... Pourbaix of TCE and Jamison Steeve of the” Premier’s office “on October ... 5, and Steeve does acknowledge that he may have come close to making the representation that TCE would be ‘made whole.’”

In that first sentence you call them “October negotiations.”

**Mr. John Kelly:** Actually, I don’t. This is Mr. Kloeze.

**Mr. Victor Fedeli:** This is Mr. Kloeze, the gentleman who took the notes.

**Mr. John Kelly:** Correct.

**Mr. Victor Fedeli:** Is it his interpretation that there were indeed negotiations taking place?

**Mr. John Kelly:** I don’t know that that was his opinion. He may have been repeating what he was told or what he understood he was told—

**Mr. Victor Fedeli:** By whom?

**Mr. John Kelly:** At the meetings between Steeve, Mullin and the others from TransCanada.

**Mr. Victor Fedeli:** That the “October negotiations”—he’s referring to the meetings that the Premier’s office had with TCE, and the negotiations of the latter, then.

**Mr. John Kelly:** Well, as he says, the OPA didn’t directly engage in discussions with TCE before October 5. Between October 5 and October 7, the record indicates that there were extensive negotiations leading up to the final letter of October—

**Mr. Victor Fedeli:** And before October 5, it was negotiations with the Premier’s office, the representatives from the Premier’s office and TCE? Is that what he’s referring to?

**Mr. John Kelly:** If there were negotiations, yes.

**Mr. Victor Fedeli:** Okay. Doc. 6, the fourth paragraph—this is from you, now: “I think it could be argued that the govt. offered to make TCE whole when it terminated the Oakville plant (the ‘make whole’ being

understood to be the net profits over the life of the contract).” Is that your understanding, then? You felt that way on July 7? You’d been there a couple of months by now.

**Mr. John Kelly:** No. What I said was, assuming that this is the scenario that unfolds, that somebody offered to make whole, my understanding, as I’ve said before here, was that that was in the sense of providing another plant of equivalent value.

**Mr. Victor Fedeli:** The last sentence: “In any event, it probably doesn’t matter as I agree the government induced the breach of the TCE contract with OPA.” What do you mean by that?

**Mr. John Kelly:** Well, my understanding of the facts was that the Premier’s office indicated through Mr. Mullin and Mr. Steeve at some time between July 15 and October 5, most likely October 1 from what I’ve read, that the contract was not going to go ahead. So as a matter of law, there is a suggestion that the government—as opposed to the OPA, who was a party to the contract—by actions that the government took, induced the breach of the contract between TCE and OPA.

**Mr. Victor Fedeli:** On doc. 8, we’re now getting into a little bit about—how’s my time, Chair?

**The Chair (Mr. Shafiq Qaadri):** About four minutes left.

**Mr. Victor Fedeli:** Let’s just jump to doc. 9, if you don’t mind. I want to get into the money. You’re copied on this letter from Ms. Wilson?

**Mr. John Kelly:** I am.

**Mr. Victor Fedeli:** It says, “When you interview your witness tomorrow morning, can you try and find out if an offer of \$680 million was made to other side, or if any monetary offer at all was made.”

Did you determine that?

**Mr. John Kelly:** I don’t remember right now. In one of the interviews with Mr. Mullin or Mr. Steeve, that question was asked, and the answer was no. No such offer was made. It’s in your materials here. I just haven’t found it right—

**Mr. Victor Fedeli:** Okay. Can you confirm that Mullin ever turned over his notes of his meetings with TCE to the Attorney General, as was requested?

**Mr. John Kelly:** As it turns out, he did. We thought, in the materials that we have, that we had Jamison Steeve’s notes. It now appears that certain of those pages are in fact the notes of Sean Mullin. The reason we didn’t know is, they didn’t come in a separate package.

**Mr. Victor Fedeli:** Do we have those?

**Mr. John Kelly:** You do, in the black binder that was sent to you—to the committee. Under 1(b)—

**Mr. Victor Fedeli:** I’m sorry?

**Mr. John Kelly:** Under 1(b), which is—

**Mr. Victor Fedeli:** Oh, we have it as a CD.

**Mr. John Kelly:** You have it?

**Mr. Victor Fedeli:** Yes.

**Mr. John Kelly:** The second page—there are numbers 1, 2, 3, 4 at the top, handwritten notes. Those are Mr.



Mullin's, apparently. Also, at tab D, as in "David," the handwritten notes are apparently those of Mr. Mullin.

**Mr. Victor Fedeli:** Okay. On doc. 11—it is from a Dermot Muir.

**Mr. John Kelly:** If I could just have your indulgence for a moment. I have it, yes.

**Mr. Victor Fedeli:** You're included on that. It talks about attached is "a new draft arbitration agreement in which the OPA is a party." Is this anywhere where the additional monies are offered? This is around July 28.

**Mr. John Kelly:** No. There were various versions of the arbitration agreement. We all made comments on what's appropriate in terms of putting it in the agreement, but there was nothing with respect to that, no.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** Thank you.

On doc. 11, page 2, this is from David Livingston: "Further to our conversation on Vapour a week ago"—you do know what Project Vapour is, I presume.

**Mr. John Kelly:** I actually didn't at the time, but—

**Mr. Victor Fedeli:** So he's sending you—did you ask him what he meant by that?

**Mr. John Kelly:** No, I didn't. I just assumed, because he was sending this to me, it had something to do with the Oakville gas plant.

**Mr. Victor Fedeli:** Okay. I'm trying to get to that \$680-million offer. You're not familiar with that offer whatsoever?

**Mr. John Kelly:** No. The first time I ever heard it was the reference by the assistant deputy to request that this be asked about. She did say in her memo that her understanding was that there was no such offer, but she wanted to cover off to make the inquiry.

**Mr. Victor Fedeli:** Had you heard of the \$712-million offer before?

**Mr. John Kelly:** Only by reading material here. Certainly I never heard anyone—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, and thanks to you, Mr. Kelly, for your testimony and your presence before the committee.

There is an issue before the committee with reference to more documents to be kept in confidence and so on. I will invite our able Clerk, Ms. Pomanski, to elaborate.

**The Clerk of the Committee (Ms. Tamara Pomanski):** We had received a bit more documents from cabinet office. It's just in a sealed envelope. It's with respect—again, it was a request to make it confidential.

In terms of it, I can just let you know exactly what it is. It's official records of cabinet meetings, within the period specified by Mr. Fedeli's motion of April 23, at which the Oakville and Mississauga gas plants were discussed, including full, unredacted, annotated agendas and summaries of decisions.

However, the majority of the information outlined in these documents is not related in any way to the Oakville and Mississauga decisions, as per Cabinet Office.

I have that little envelope in my office, waiting for direction.

**The Chair (Mr. Shafiq Qaadri):** I presume, before the committee, a similar decision: What do we do with the documents? If you want them—do they have to sign a receipt for these things?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Whatever they want to do.

**The Chair (Mr. Shafiq Qaadri):** Yes. Anyway, there's a whole protocol. We don't have to decide that immediately. We still have a meeting, as you know, next week.

Yes?

**Mr. Victor Fedeli:** Chair, how many pages have we got?

**The Clerk of the Committee (Ms. Tamara Pomanski):** It's a little envelope like this. It's not that big.

**Mr. Victor Fedeli:** So 30 or 40 pages?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Yes. It's not that big.

**The Chair (Mr. Shafiq Qaadri):** I'll let that sit with the committee until next week? Yes? All right. Therefore, committee is adjourned until next week.

*The committee adjourned at 1000.*





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**Standing Committee on  
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Members' privileges

**Comité permanent  
de la justice**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 23 May 2013

Jeudi 23 mai 2013

*The committee met at 0901 in room 151.*

## MEMBERS' PRIVILEGES

HON. CHARLES SOUSA

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I welcome you to the Standing Committee on Justice Policy. As you know, we're here to consider energy infrastructure. I commend you on serving on the committee on the off-week of Parliament.

I have the privilege now of inviting our first guest to participate, the Honourable Charles Sousa, the Minister of Finance.

Mr. Sousa, I invite you to please be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Charles Sousa:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Minister Sousa, you have five minutes, as you know, to make your opening address. I invite you to begin now.

**Hon. Charles Sousa:** Thank you, Mr. Chair. I am pleased to have this opportunity to speak about my efforts on behalf of the people of my riding and to share my perspective on power plants in the surrounding communities.

Since before I was first elected to represent the people of Mississauga South in 2007, I've been clear and consistent on this topic. I have always opposed the location of the Mississauga plant and believed it was poorly sited. I opposed it before running for office. I opposed it as a candidate in 2007, and I opposed it as an MPP. I opposed it as a minister, and I opposed it when running for re-election in 2011. Since being re-elected, I have stood by my record, which is why I recused myself from any discussions of the negotiations at cabinet and treasury board, in order to avoid the appearance of a conflict of interest.

Even though the proposed plant was at a neighbouring riding, the people of my community did not want any new emitters constructed. My first responsibility is to the people who sent me here, and I was proud to stand with them consistently to protect our air.

After being elected in 2007, I sat on the Clarkson airshed advisory committee and the Petro-Canada Public

Liaison Committee. In 2009, our government acted on local input and formed the Southwest GTA Air Quality Task Force, under the leadership of Dr. Balsillie. The task force produced a report for the Minister of the Environment in 2010.

So after years of effort, with science on their side and the recommendations of experts in hand, the people of Mississauga and Oakville worked hard to protect air quality in the entire GTA, and they made great progress. It was truly a community effort. They called their politicians and requested meetings. Thousands more wrote letters and signed petitions. The community was united. City council was united. And I was proud to stand with them. In fact, I've made sure that information about my activities on these issues was, and is, available on my website for all to see.

Yet electricity planners were saying that local demand for power was growing, citing the blackouts that had occurred years earlier. The previous Conservative government knew this all too well. They had done little to secure the integrity of the grid. But our government was always looking to ensure sufficient generation capacity, especially when we also wanted to stop burning dirty coal. We celebrated the permanent closure of Lakeview power plant, the worst polluter in the GTA at the time.

After years of PC neglect of our electricity system, there was indeed a lot of work to do to keep the lights on. So the OPA awarded the Oakville facility. But in October 2010, the government determined that the project would not proceed. There was clear evidence that it no longer required a facility in the southwest GTA to meet those energy needs.

However, in April 2005, before I was elected, Greenfield South Power Corp. still held a contract to develop and operate a gas plant in Mississauga at a stone's throw away from people's homes.

Then came the 2011 election campaign. Suddenly, construction began and concerns were mounting. People were asking where the candidates stood on the issue. As their local candidate, my position was unchanged. I continued to oppose any new emitters being built in our stressed airshed. In fact, I had stood in the House to speak against increased emissions at Lakeview, Clarkson, Oakville and Sherway.

The community felt so strongly about the issue that they held numerous public rallies, and on September 15, 2011, they asked all local candidates to attend. As the



incumbent MPP, as a candidate and as a resident, it was my duty to attend. I was pleased that my colleagues from Etobicoke attended as well. There I said what I had been saying all along: that I opposed any new emitters being built in our sensitive airshed. I was concerned about the effect it would have on future generations, irrespective of election cycles.

On September 24, 2011, on behalf of the Ontario Liberal Party, I announced that, if re-elected, the government would relocate the Mississauga facility. That commitment was then echoed by the PCs and the NDP. Shortly after being re-elected, our government announced the relocation of the Mississauga facility, as promised by all three parties.

In conclusion, I'm pleased that the committee is exploring this issue even further. As our Premier noted during her appearance before this committee, it is in everyone's interest that this issue be addressed. We need proper siting with effective setbacks and a cumulative emissions impact study, as I recommended in October 2010 by way of a resolution in the House, so that we get it done correctly from the start.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Sousa.

To the PC side: Mr. Fedeli, 20 minutes.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good morning, Mr. Sousa.

**Hon. Charles Sousa:** Good morning.

**Mr. Victor Fedeli:** You mentioned, in your opening statement, that power was no longer required in the southwest GTA, and that was the reason why the Oakville plant was cancelled. So why are you building another plant down in southeastern Ontario at a far greater expense and planning to pay additional money to transmit that power into Oakville if you didn't need a facility any longer?

**Hon. Charles Sousa:** As I cited, and as I indicated, it was also in regard to the stressed airshed. The Clarkson airshed study came out; it noted that there were high levels of particulate matter in the area. It also noted that the degree of energy requirements were not as necessary. We also found that we had a willing host outside of the area prepared to take it on, and it enabled us to make the transfer and the relocation.

**Mr. Victor Fedeli:** Well, actually, you said it was no longer required, a facility—that you didn't need the power in the southwest GTA.

**Hon. Charles Sousa:** That's what the OPA said.

**Mr. Victor Fedeli:** Oh, that's—

**Hon. Charles Sousa:** That's what I understand.

**Mr. Victor Fedeli:** Oh, that's quite different than what your Premier said today. She said, under oath, it was cancelled for political reasons. She swore an oath and said it was cancelled for political reasons. Do you not agree—

**Hon. Charles Sousa:** The members of the community, as well as those who had been reviewing the demands of the community and the energy needs, said that it wasn't necessary.

**Mr. Victor Fedeli:** Oh, but you're spending maybe \$800 million or \$900 million to build one to get that power there now.

**Hon. Charles Sousa:** Actually, I think we're building around—we've built about 17 plants.

**Mr. Victor Fedeli:** I'm talking about the one to replace the one that's needed in Oakville. So you do need the power now?

**Hon. Charles Sousa:** I believe the OPA will be best to respond to what the needs are for the area.

**Mr. Victor Fedeli:** Yes, they have responded. So did your Premier. She said it was cancelled for political reasons. She swore an oath and said that under testimony here. Do you not agree with her?

**Hon. Charles Sousa:** I've been consistent for the last five or six years, opposing the siting of the power plants because they were poorly sited and needed proper setbacks, and we had to take into effect the cumulative impact of further emissions in the community. That was my drive and my motivation for doing what I did.

**Mr. Victor Fedeli:** So when she swore an oath that it was cancelled for political reasons, then you don't agree with her. You say—

**Hon. Charles Sousa:** I believe the Premier said that it was politicians who made the decision to relocate it, from all sides of the House. All members and all three parties made that decision.

**Mr. Victor Fedeli:** No, that's not what she said. That's not what she said.

I want you to go to your documents now, document 1. You will find, on the first page, it says, "Attached is the Project Vapour update deck for tomorrow's briefing." This is circulated through the Ministry of Finance. Page 6—it's numbered page 6—of this confidential and commercially sensitive document says they're estimating a value of the TransCanada settlement. It's called settlement value—out-of-pocket expenses, \$37 million; the cost of turbines for the project, \$210 million, if they cannot be redeployed; estimated financial value of OGS—now, I know that some of your documents for OGS, we didn't get at first, but OGS is Oakville generating station—initially positioned as a net present value of \$503 million and subsequently positioned as \$385 million, using a higher discount rate.

This is a document from January 16, 2012. Have you ever seen this document before?

0910

**Hon. Charles Sousa:** No, I have not.

**Mr. Victor Fedeli:** Why not?

**Hon. Charles Sousa:** Because I haven't seen it. This was obviously something, from what I can gather, that was an estimate. The minister at the time and the ministry were doing, presumably, risk analysis as to what was necessary to end—as a result of the renegotiations, all of this was for naught. I mean, they—

**Mr. Victor Fedeli:** Well, it wasn't for naught. It did turn out to be \$40 million. The turbines did come out to \$210 million. We now know that the other value, according to the vice-president of OPA and the energy expert,

could be as high as \$910 million. So we do know that it's not for naught, that it is actually money that has been pledged or spent.

This is a Ministry of Finance document from 2012. Would this imply, then, that people within the ministry would have understood that there were more than \$40 million in costs?

**Hon. Charles Sousa:** This would imply that the people in the ministry took the precautions to do a risk assessment as to what could have been a worst-case scenario in this respect. They took the precautions necessary—renegotiations—now that we have the Auditor General doing his work, recognizing the impact as to what will be assessed over the next 20 years.

**Mr. Victor Fedeli:** So you would acknowledge, then, that this is indeed, if you go back to the first page—the email, Ministry of Finance to Ministry of Finance; this is interdepartmental. It also includes Serge Imbrogno when he was at OFINA. What is OFINA, for the people?

**Hon. Charles Sousa:** I'm not sure what the acronym stands for.

**Mr. Victor Fedeli:** Okay. You are the current finance minister.

**Hon. Charles Sousa:** I am.

**Mr. Victor Fedeli:** Okay, thank you. I want you to go to document 2. You'll see that somewhere down through there. They call it an electricity dashboard, a document briefing for the Minister of Finance. Do you see that cover page? It's a couple of more pages in there.

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** Okay? Go in to the next page. It's a chart. Do you see that chart on the next page?

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** Okay. Down in the bottom right-hand corner it says, "Managing Gas Plant Terminations." Could you read the second bullet point there, please?

**Hon. Charles Sousa:** "Potential exposure of \$300 million to \$500 million on Oakville and \$300 million to \$400 million for Mississauga."

**Mr. Victor Fedeli:** Okay. This is a document from January 29, 2012. It is a document briefing for the Minister of Finance. Would you suggest, then, that either the ministry or the Minister of Finance would have known that, as you just read, there was a potential exposure of \$300 million to \$500 million for Oakville and \$300 million to \$400 million for Mississauga? Is that—

**Hon. Charles Sousa:** Yes, and I believe the operative word is "potential." I mean, they would have assessed, presumably, the potential that may exist if the things were not renegotiated or if they couldn't get conclusion to the matter.

**Mr. Victor Fedeli:** Being a man of numbers, you would also acknowledge that \$300 million to \$500 million is greater than \$40 million?

**Hon. Charles Sousa:** Well, of course it is.

**Mr. Victor Fedeli:** Okay. It is. I agree with you; of course it is.

Go in two more pages, then. You're now on page 2 of 6, down on the bottom right-hand side. The second bullet

point, "The southwest greater Toronto"—do you see that?

**Hon. Charles Sousa:** Sorry, you're going to have to tell me where you are.

**Mr. Victor Fedeli:** It's two pages in. It's numbered. It says on the bottom right-hand side, "Page 2 of 6."

**Hon. Charles Sousa:** All right.

**Mr. Victor Fedeli:** Okay. You're now at number 1: "Treasury board approval for any directives with potential fiscal impact." Do you see that? It's point number 1, the third sentence from the top. "1. Treasury board approval..." It's underlined and it has the number 1. Do you see that?

**Hon. Charles Sousa:** Yes.

**Mr. Victor Fedeli:** Okay. There are two black bullet points and two white bullet points. Do you see those?

**Hon. Charles Sousa:** Yes.

**Mr. Victor Fedeli:** Could you read the last white bullet point, please?

**Hon. Charles Sousa:** Underlined?

**Mr. Victor Fedeli:** Yes, it is underlined.

**Hon. Charles Sousa:** Yes. "The southwest greater Toronto area supply directive may ultimately have an impact of hundreds of millions of dollars due to the subsequent cancellation of the Oakville generating station project and potential settlement costs."

**Mr. Victor Fedeli:** Thank you for the extra inflection. It's always appreciated. The radio voice is appreciated.

**Hon. Charles Sousa:** Well, I want to make clear that this was all undetermined.

**Mr. Victor Fedeli:** It's very clear—

**Hon. Charles Sousa:** This was an undetermined amount and they were taking precautions.

**Mr. Victor Fedeli:** I realize that. Two more pages in, then, please. Now we're at page 4 of 6: "The Ontario Financing Authority (OFA) currently provides a \$975-million revolving line of credit to the OPA..."

Would you acknowledge that that is accurate, even today? Would you know, as finance minister, whether that is still in line?

**Hon. Charles Sousa:** I'll have to check back on that.

**Mr. Victor Fedeli:** Okay. I'll appreciate it if you will undertake to do that for us.

**Hon. Charles Sousa:** Absolutely.

**Mr. Victor Fedeli:** The line of credit, do you know how that works? Does that mean they advance money to the OPA? Or do they give money to the OPA as required, like a bank's line of credit? You have an established line of credit and you can go and draw on it.

**Hon. Charles Sousa:** Yes. Obviously there's a note and credit facility to the IESO, as stipulated right here.

**Mr. Victor Fedeli:** When the OPA drew down in July \$245 million—we've had sworn testimony from Colin Andersen of OPA that early in July they drew \$245 million. This is while the government was telling us one thing, the OPA was paying the actual bill for Mississauga. We're on Mississauga now.

Would you then know whether the Ontario Financing Authority would know that that money was drawn down?



**Hon. Charles Sousa:** Yes. I don't know the particulars of the transaction.

**Mr. Victor Fedeli:** Okay. That's fair. That's fair enough.

If you go, then, several pages in now, we're going to look for doc 4. It's about three more pages in. "Doc 4" is written in the top right-hand corner. This is a very complicated series of pages now. It's the electricity sector outlook. This is the budget revenue; this is their expenses. I want you to follow with me: not the first page, not the second page, not the third, not the fourth, not the fifth, not the sixth, not the seventh, but the eighth. It looks like this. It's a short chart; it's the last one. Are you on that page?

**Hon. Charles Sousa:** I am.

**Mr. Victor Fedeli:** Right at the bottom of the chart, it says, "Settlement for cancellation..." Can you see that?

**Hon. Charles Sousa:** I do.

**Mr. Victor Fedeli:** It says, "Further risks: Settlement for cancellation of Oakville and Mississauga gas plants." And over a little further, in 2012 and 2013, it has \$900 million. Do you see that there?

**Hon. Charles Sousa:** Yes.

**Mr. Victor Fedeli:** Would you acknowledge, then, that—somebody is telling you that the "further risk," you have a risk of \$900 million for the cancellation of Oakville and Mississauga gas plants. Would you acknowledge that, at this point in time, this is somebody's risk?

**Hon. Charles Sousa:** I would acknowledge that they took the precaution of assessing potential risks and took a worst-case scenario to ensure that they accounted for it by way of a discretionary amount.

**Mr. Victor Fedeli:** Do you see that line that says, "Settlement for cancellation of Oakville and Mississauga gas plants"? There's a little 6 there. What does that mean?

**Hon. Charles Sousa:** I would presume it refers to note 6.

**Mr. Victor Fedeli:** Can you go down the notes and read me note 6?

**Hon. Charles Sousa:** I can't.

**Mr. Victor Fedeli:** Why?

**Hon. Charles Sousa:** I don't see it.

**Mr. Victor Fedeli:** You don't see note 6 there?

**Hon. Charles Sousa:** I do not.

**Mr. Victor Fedeli:** There's no note 6 on the copy. Can you explain why there would be no note 6?

**Hon. Charles Sousa:** I cannot.

**Mr. Victor Fedeli:** Would you have any idea why there's no note 6?

**Hon. Charles Sousa:** I don't know.

**Mr. Victor Fedeli:** But you acknowledge that note 6 is not printed here.

**Hon. Charles Sousa:** That's obvious.

**Mr. Victor Fedeli:** It's very obvious.

Go to the next page, then, document 5. This, again, is Ministry of Finance documents. Can you read the first sentence in the email there, please?

**Hon. Charles Sousa:** What? "They are using \$900 million for the gas plants"?

**Mr. Victor Fedeli:** Yes. Do you have any idea what they're talking about there?

**Hon. Charles Sousa:** I would presume it refers—but I don't know—to what you've just shown me in the previous section.

0920

**Mr. Victor Fedeli:** To the Clerk: I have another document to hand out.

I'm handing out another document. You're going to find it hard to read. Perhaps I'll have to read it for you. We now have an unredacted document that does list what note 6 is. You acknowledged on the document that we received from the ministry that note 6—in fact, notes 5 and 6 are nowhere to be seen there. They are missing; they have been, I'll say, redacted. There's nothing on that document. You acknowledge that the document that you had in front of you has no note 5 or no note 6?

**Hon. Charles Sousa:** That's what it said.

**Mr. Victor Fedeli:** Would you have any idea why we were given an incomplete document that's been redacted?

**Hon. Charles Sousa:** I do not.

**Mr. Victor Fedeli:** Considering we keep hearing from your government that—

**Hon. Charles Sousa:** Hold on just a moment. I just want to get my glasses.

**Mr. Victor Fedeli:** Yes.

Considering we keep hearing from the government, Chair, that there are no redacted documents, I do object to that statement continually being used, when here we very clearly have a document that's redacted. Let me tell you why it's been redacted, Chair. And I'll read that, because it's going to be very hard, Mr. Sousa, for you to read. I can appreciate that because it's a copy.

Let me read number 6, what was redacted in the original copy that we received: "Government is currently in negotiations to settle the cancellation of these plants with the developers, with an exposure identified up to \$900 million, depending on the outcome and mechanism of the settlement (maybe electricity sector exposure if delivered through OPG)."

Do you have any idea what that means?

**Hon. Charles Sousa:** Yes. It means that someone has taken precautions, that it's still under negotiations and that it makes reference to the fact that it's dependent upon those negotiations. Obviously, those negotiations took and, from what I understand, it didn't come to the \$900 million.

**Mr. Victor Fedeli:** Well, we haven't found that out yet. But let me tell you, I would agree with you that you're right in the first sentence. Someone has taken precautions. Someone has taken precautions to make sure we never see that sentence.

**Hon. Charles Sousa:** Obviously the sentence is there and—

**Mr. Victor Fedeli:** It's there in a further document.

**Hon. Charles Sousa:** —precautions probably were taken as a result of ongoing negotiations.

**Mr. Victor Fedeli:** It's been redacted. It has been redacted. We continue to hear from your government that we have everything unredacted. Clearly, absolutely and definitively, this is proof that we have been receiving less than what we deserve to have received. Someone has gone out of their way—that doesn't just fall off of a document. That has been removed by somebody. Would you acknowledge that?

**Hon. Charles Sousa:** I acknowledge what I'm reading and that is, it was under negotiations and it has—

**Mr. Victor Fedeli:** No, no, no. Read it on the first document—

**Hon. Charles Sousa:** —it'll be subject to the outcome of those negotiations.

**Mr. Victor Fedeli:** Go back to document 4—

**The Chair (Mr. Shafiq Qaadri):** Gentlemen, if you might not shout at each other, at least—

**Mr. Victor Fedeli:** Go back to document 4 and read it off there. You can't because somebody has removed it from document 4, hoping we never see that sentence. Thankfully, we had enough time to go through the extra thousands of copies that were put on us and we found one copy that does indeed have it.

**Hon. Charles Sousa:** So it was delivered. It was delivered. Okay, that's fine.

**Mr. Victor Fedeli:** You're not going to get away that easy. That was purposely removed by somebody. I want to know who removed that.

**Mr. Bob Delaney:** Chair, on a point of order—

**Mr. Victor Fedeli:** I want to know who removed that.

**Mr. Bob Delaney:** On a point of order, Chair—

**Mr. Victor Fedeli:** I want to know who removed that.

**Mr. Bob Delaney:** The member is violating the standing orders by trying to impute motive to a member and is asking for speculation.

**Mr. Rob Leone:** No, he's not.

**Mr. Victor Fedeli:** It's pretty damned clear.

*Interjection.*

**Mr. Victor Fedeli:** Somebody removed it. That's impugning the motive of this committee. Somebody removed a document.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I would invite you to take a deep breath, Lincoln-style, and continue.

**Mr. Victor Fedeli:** Well, I'm just sick and tired—Chair, I appreciate that. I'm just sick and tired of having people here who have hidden documents from us. This just proves beyond a shadow of a doubt the concerted effort of the Liberal government to hide the facts from us. Somebody obviously did not get through all the documents to cover them all up, but there are documents that have been clearly covered up in here. I'm just bloody sick and tired of it.

**Mr. Bob Delaney:** Chair, if Mr. Fedeli is finished—

**Mr. Victor Fedeli:** I'll go on to my document 7.

*Interjection.*

**Mr. Victor Fedeli:** I didn't hear a point of order. I'm going on to document 7.

**Mr. Bob Delaney:** Chair, I am—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney on a point of order.

**Mr. Bob Delaney:** On a point of order, Chair: If Mr. Fedeli had actually read all of the documents, he would have found exactly that document in the same release of documents.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli, please continue.

**Mr. Bob Delaney:** Okay?

**Mr. Victor Fedeli:** Thank you, Chair.

So somebody has gone to great pains to remove—it doesn't just fall off of a document. Somebody messed up and didn't cover them all up; that's the problem. They got caught again. They got caught again, and we're going to hear from them again, with lots of excuses. You can't excuse your way out of a document that has it missing. It's missing; it's not here—

**Mr. Rob Leone:** It should have been there.

**Mr. Victor Fedeli:** —and it should have been there all along.

**Mr. Bob Delaney:** You cherry-picked the documents.

**Mr. Victor Fedeli:** I didn't cherry-pick; that's the document.

**The Chair (Mr. Shafiq Qaadri):** All right, gentlemen, you actually have a witness. You're welcome to attack each other later.

**Mr. Victor Fedeli:** Well, there's no attacking. It's plain and simple here. This government has covered up another document, hoping we don't get to the \$900-million number.

On document 7, Mr. Sousa—this is a quote from you out of Hansard around the 24th or 25th of September. This is you standing in the Legislature:

"The Ministry of Energy and the Ontario Power Authority released 36,000 records requested by the estimates committee. The government put each and every document on a USB key. The request of the committee for these documents has been satisfied.

"The minister has complied with the committee's request and the ruling of the Speaker. He has personally attested to the documents being complete, and as parliamentarians, we are bound to respect that."

Two weeks later, we found out that that indeed was not true, that there were 20,000 more documents, and then thousands have come since then. How did you come to stand in the Legislature that day and tell us that we had all the documents?

**Hon. Charles Sousa:** To the best of my knowledge, that is what the OPA delivered to the Ministry of Energy, that's what was released and that was what was advised.

**Mr. Victor Fedeli:** So it's OPA's fault?

**Hon. Charles Sousa:** No, I'm just telling you what I was told.

**Mr. Victor Fedeli:** By whom?

**Hon. Charles Sousa:** By the Ministry of Energy. That's what they received from the OPA, and those were the amounts that were released at the time.

**Mr. Victor Fedeli:** The Ministry of Energy told you to say "36,000"?



**Hon. Charles Sousa:** We were all advised that that was the amount of documents released, that was what was produced and that was, to the best of my knowledge, what I understood—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you very much, Chair. Minister, thank you for being here this morning.

**Hon. Charles Sousa:** Thank you.

**Mr. Peter Tabuns:** When you sign documents, do you read them—cabinet documents?

**Hon. Charles Sousa:** I sign documents and I read them, sure.

**Mr. Peter Tabuns:** Do you ask about the financial implications of the documents that you sign off on?

**Hon. Charles Sousa:** Absolutely.

**Mr. Peter Tabuns:** When were you told about the Mississauga cancellation?

**Hon. Charles Sousa:** When?

**Mr. Peter Tabuns:** When. In the fall of 2011—

**Hon. Charles Sousa:** You're talking about the Lakeview or the Sherway?

**Mr. Peter Tabuns:** About the Sherway.

**Hon. Charles Sousa:** Sherway. As I said, I had been advocating since 2007. It came to be in September—I think I wrote in my opening statement the date on which I actually did the announcement.

**Mr. Peter Tabuns:** No, I know when you did the announcement. When were you told it was going to be cancelled?

**Hon. Charles Sousa:** Oh. Days prior.

**Mr. Peter Tabuns:** And who told you?

**Hon. Charles Sousa:** I was called by two individuals: Dave Gene and Don Guy.

**Mr. Peter Tabuns:** Sorry, Don Guy and—

**Hon. Charles Sousa:** Dave Gene.

**Mr. Peter Tabuns:** Dave Gene. And what did they tell you?

**Hon. Charles Sousa:** They asked me to prepare a press conference for that coming weekend to announce that we would relocate the Mississauga Sherway power plant.

**Mr. Peter Tabuns:** And what were you told about costs?

**Hon. Charles Sousa:** We were told that relocating would minimize the potential costs. This was in keeping with what the community had been advocating for throughout those years. As I mentioned, construction had started to continue. We wanted to make certain that we were able to announce the relocation so that it would minimize the costs.

**Mr. Peter Tabuns:** I understand all that. What did they say the dollar risk was?

**Hon. Charles Sousa:** They didn't.

**Mr. Peter Tabuns:** They didn't. And did you ask them?

**Hon. Charles Sousa:** I was trying to determine—I wasn't privy to the numbers in terms of how much had

been constructed, but it was understood that most of that would have been able to be recovered and moved to a separate location.

**Mr. Peter Tabuns:** Most of that would be recovered and moved—so you were told that this wouldn't cost anything at all?

**Hon. Charles Sousa:** I was advised and dealt with the same information as the Progressive Conservatives were dealt, as were the NDP. Everybody agreed that this was something that we agreed we would do.

**Mr. Peter Tabuns:** No, but that's not the question. You didn't ask what it would cost, and apparently they didn't tell you. So you were quite willing to just spend that money.

0930

**Hon. Charles Sousa:** As were the PCs and the NDP.

**Mr. Peter Tabuns:** We'll get on to that, Mr. Sousa, but it's pretty clear that you were called by senior people on the campaign team; they were making a campaign decision. You went along with that decision. You didn't ask about the costs. Did they tell you to announce late on a Saturday night, when—

**Hon. Charles Sousa:** It wasn't on a Saturday night. It was done during the day on Saturday—in the morning, I believe. It was done with community members—and opposition members, for that matter—in attendance as well.

**Mr. Peter Tabuns:** Okay. When you were sworn in as finance minister, were you briefed on the costs of this?

**Hon. Charles Sousa:** I was made aware of the costs the same way that we've all been made aware. I was pleased that the Premier had asked the Auditor General to investigate the totality, to be fully transparent and to determine exactly what the costs would be.

**Mr. Peter Tabuns:** No, that's not my question. Were you briefed on the costs as finance minister?

**Hon. Charles Sousa:** I was told what the costs were that were included in the previous budgets and in public accounts. Going forward, the Auditor General was asked to do a full audit in terms of where we were going to be.

**Mr. Peter Tabuns:** So did you request any more of a briefing on costs than that?

**Hon. Charles Sousa:** It was being done.

**Mr. Peter Tabuns:** As finance minister, do you think it's a good idea to make decisions without knowing what the cost of something is going to be?

**Hon. Charles Sousa:** It appears that I just finished testimony indicating the precautions that were taken to determine the worst-case scenarios. Negotiations proceeded thereafter to provide for resolution at reduced amounts. It was indicated—

**Mr. Peter Tabuns:** So what were you told were the worst-case scenarios?

**Hon. Charles Sousa:** I was waiting, when I arrived, to determine what the full costs would be by the Auditor General. The costs that were attributed were the \$40 million plus the other \$190 million.

**Mr. Peter Tabuns:** No. Let's go back. You said you were told what the worst-case scenarios would be—

**Hon. Charles Sousa:** No. What I just read were precautions made by the ministry officials around that time.



**Mr. Peter Tabuns:** I'm not asking you about that.

**Hon. Charles Sousa:** I just read it. I just went through that deliberation.

**Mr. Peter Tabuns:** Yes, but I'm not asking you that question. Were you told what the worst-case scenario would be?

**Hon. Charles Sousa:** No, I was not.

**Mr. Peter Tabuns:** And you didn't ask?

**Hon. Charles Sousa:** I have just responded. The Auditor General was doing a full accounting of what was taking place, and we accounted—

**Mr. Peter Tabuns:** The Auditor General wasn't doing a full accounting in the fall of 2011.

**Hon. Charles Sousa:** But we accounted for, in public accounts, the amounts that were attributed. I knew.

**Mr. Peter Tabuns:** You knew after the estimates committee and the public accounts committee dealt with it. You didn't know at the time that this cancellation was relayed to you—

**Hon. Charles Sousa:** You just asked me what I knew as finance minister. I just told you.

**Mr. Peter Tabuns:** And I'm going back to: When you were a candidate, you were not told what the risk was—the scale of risk that you were taking on?

**Hon. Charles Sousa:** No, I was not aware of the full impact of the financial implications of the relocation. I did know, though, contrary to what the Conservatives were proposing—which was a full cancellation; that would have been an expensive alternative—that this was a relocation to another site to continue with the proponent's contract.

**Mr. Peter Tabuns:** So you had no idea. You didn't know what the risk was. It could have been \$50 million; it could have been \$1 billion—who knows?

**Hon. Charles Sousa:** It would have been—in terms of what I understood it to be was the amount of sunk costs that were in the system, because they were still going to be the proponent and they were still going to have a contract, and it was just being moved to a new location.

**Mr. Peter Tabuns:** And how much was that?

**Hon. Charles Sousa:** I wasn't aware of the full amount of the sunk costs.

**Mr. Peter Tabuns:** In a moment I'm going to turn it over to my colleague, but I have one question that arises from the documents that Mr. Fedeli presented: PC doc 1, the Project Vapour update from the corporate and electricity finance division, page 3, second-last bullet:

TransCanada Enterprises—I'm sure you'll be there shortly—"was already in force majeure under the OPA contracts by October 2010, as it had not obtained the necessary municipal permits, and the contract would have allowed the OPA to terminate on its own by the end of 2011, without penalty."

The OPA had previously informed the Liberal government that it could cancel this plant with little losses if it went slowly, or it could incur major losses if it went quickly. Apparently the Ministry of Finance concurred that there was a way to do this without damage to the

people of Ontario, but that isn't the choice that your government made.

Do you think that it's responsible to take an option that presents such high risk and cost to the people of Ontario?

**Hon. Charles Sousa:** Now you're referring to the Oakville site.

**Mr. Peter Tabuns:** I am indeed.

**Hon. Charles Sousa:** Okay. I was not involved in that decision.

**Mr. Peter Tabuns:** I'm asking, do you think it was responsible for your government to take an option that has proven to be so expensive when they were given advice by the Ontario Power Authority that they could wait it out and have much lower costs? Frankly, the Ministry of Finance recognized that there was an option before the government that would not have involved us in spending half a billion dollars or more in damages to TransCanada.

**Hon. Charles Sousa:** I think it was responsible for the government to make a decision to protect the interests of the community. Recognizing that a Clarkson airshed advisory report had come out citing the levels of stressed air—that was available and that was affecting the community and the decision to relocate the facility. Better setbacks, I think, were the right decision. I've been advocating for that all along.

**Mr. Peter Tabuns:** That's pretty breathtaking for a Minister of Finance facing multi-billion dollar deficits. When your government had the option of acting to cancel this contract, it had the option of doing it in a way that did not put Ontario at the risk it was put at. The only thing that was being protected was the Liberal Party in the run-up to the 2011 election.

**Hon. Charles Sousa:** No; you're referencing a paragraph that was made as a recommendation, but there are obviously more discussions and negotiations that likely would have occurred through that process, so I don't know the full extent at which that was involved.

**Mr. Peter Tabuns:** I've read those other documents, where the Ontario Power Authority said, "You can do it quickly, and it will be very expensive, or you can do it slowly and you can minimize your costs." The Ministry of Finance shared the same opinion. With force majeure, with city bylaws, this plant in Oakville was in deep trouble. The Liberal government could have protected the people of Ontario, but it chose not to; it chose to protect itself. As a Minister of Finance facing significant financial problems in this province, do you see this action as irresponsible?

**Hon. Charles Sousa:** You're making assumptions as to what the Ministry of Finance agreed to or not. All I understand is that \$40 million was attributed to this particular site, and that was accounted for in our public accounts, in the budget.

**Mr. Peter Tabuns:** Well, you clearly need a briefing. I'm going to turn this over to my colleague.

**Mr. Gilles Bisson:** Listen, it's astounding—following up on the questions of Mr. Tabuns—that you're the guy in charge of a \$120-some-odd-billion budget and you



think it was financially prudent for the government to take a position that costs us an extra half a billion dollars. I'm a little bit speechless on that comment, and I'd just say that if that's where you're coming from, I think we're in deep trouble.

Let me just get to this document and say the following. The Premier stood before this committee and swore under oath that the only number that she knew at the time was that it was going to cost \$40 million to shut down the Oakville power plant. She said that under oath, but that flies against what is actually in the documents that were provided to cabinet and what was available when the decisions were being made. It's pretty clear by these documents. If you go and take a look at the document, it says that in the case of Mississauga, it's anywhere from \$300 million to \$400 million to cancel, and in the case of Oakville, it's between \$300 million and \$500 million.

How can the Premier and other members of your government come to this committee and say that you didn't know up until recently that this thing was more than \$40 million, when the documents that you had at cabinet, the documents that you had at the Ministry of Energy and the documents that you had at the Ministry of Finance clearly state that the cost was far in excess of \$40 million? What does that mean about the testimony that we've been given up to now? Are they telling the truth?

**Hon. Charles Sousa:** I'm under oath; I am telling the truth, and I always have, so I take exception to that comment.

This is what I can tell you: \$40 million dollars was attributed to the Oakville power facility as a sunk cost. We have asked for further information as to what it will be. We've obviously done 17—

**Mr. Gilles Bisson:** But this information—

**Hon. Charles Sousa:** I'll finish.

**Mr. Gilles Bisson:** My point is, the information—

**Hon. Charles Sousa:** I'll tell you: 17 other plants have been built—

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, please let him finish.

**Hon. Charles Sousa:**—and in incurring the relocation and the construction and the new facility, over a period of 20 years, there are going to be costs incurred with that construction. Now they are attributing a proportionate amount by way of transmission, as I understand it, and that's being built into the ratepayer base, as are the other power plants that are being built.

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So that is where those funds are being attributed until such time as they're determined. It's still undetermined as to what those costs are, and you're making presumptions at the high end and at the low end. We don't know; that's why we've asked for clarity.

**Mr. Gilles Bisson:** There are no presumptions. The point is, Minister—

**Hon. Charles Sousa:** The point is, it's under the ratepayer base and—

**Mr. Gilles Bisson:** Okay, you can stop skating and I'll take my time back. The point is that your government, the Ministry of Finance, the deputy ministers across the

government, the Minister of Energy and the Premier's office had documents and had been briefed that in fact the numbers were far in excess of \$40 million.

We've had the Premier come to this committee, we've had the former Premier come to this committee, we've had various ministers and past ministers come to this committee and swear up and down that they didn't cost more than \$40 million and they were not aware of any figure above that until after the auditor reported his findings. It's clear by these documents that you guys knew it was over \$40 million, and what you were doing was essentially trying to keep the numbers low in order to save your political hides. So were you guys telling the truth when you came before this committee?

**Hon. Charles Sousa:** I have always told the truth, and I'm finding that the line of questioning is about the ratepayers' additional costs that are going to be incurred with the construction of a new facility in a new location.

**Mr. Gilles Bisson:** Are you aware that not telling the truth at this committee could perjure you and others who were before this committee?

**Hon. Charles Sousa:** Mr. Bisson, I—

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, I think we're all aware of that. Thank you.

**Mr. Gilles Bisson:** It's a perfectly okay question. I asked the question; could you answer?

**Hon. Charles Sousa:** Well, let me answer the questions then. You've cited the potential, the undetermined amount, the precautionary measures taken to assess what would be the construction of a new facility elsewhere. That will be applied to the ratepayer group, as are all the other power plants that are being built. The sunk costs that were determined at the time by the OPA—

**Mr. Gilles Bisson:** How much time do I have, Chair?

**The Chair (Mr. Shafiq Qaadri):** Five minutes.

**Hon. Charles Sousa:**—were \$40 million for Oakville, and that was accounted for under the taxpayer base.

**Mr. Gilles Bisson:** So these numbers provided in the documents that were given to cabinet, given to the Ministry of Energy, given to the Ministry of Finance, given to the deputy ministers—they just made up numbers and pretended they didn't exist, and really it was \$40 million, but they just put these numbers in for fun?

**Hon. Charles Sousa:** Mr. Bisson, you've just admitted how complex the numbers are and how they keep changing, and that's the issue we're trying to determine. That's why we're being open and transparent. We want clarity.

**Mr. Gilles Bisson:** I think what you're admitting is that you guys tried to fudge the numbers for political reasons. These documents are clear.

**Hon. Charles Sousa:** Again, that's inappropriate.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, I'm not sure of the quality of the word "fudge" in parliamentary practice.

**Mr. Gilles Bisson:** I like fudge, especially chocolate fudge. I have some if you want some. I'll bring some over next week.

The point is, these numbers, the numbers in this document and other documents, clearly briefed the cabinet



and briefed the decision-makers within your government that in fact the numbers were above \$40 million. That's what these documents show. Yes or no?

**Hon. Charles Sousa:** No. These documents are indicating that they were taken—potential risks were being assessed.

**Mr. Gilles Bisson:** Okay, well let me ask you this question: Why didn't the Premier and other members of your government say, "Potentially, it could be between \$300 million to \$500 million, but we believe it's \$40 million." You chose to sit on the \$40-million number and decided not to divulge that in fact, there were estimates that were showing that it was far in excess of that. Clearly, you were trying to—

**Hon. Charles Sousa:** Mr. Bisson, I was not a part of this decision. I wasn't privy to these numbers. I can tell you that what I was advised and what I was told, as were all of us, was that \$40 million was what the OPA determined to be the sunk costs for these events. I believe it's on the website in terms of all the other opportunities that were there to be disclosed.

**Mr. Gilles Bisson:** When cabinet, the Premier's office and deputy ministers are given numbers, nobody reads the documents and nobody believes anything that's in them because they're probably all wrong? Is that what you're telling me?

**Hon. Charles Sousa:** These are assessments and recommendations that were put forward.

**Mr. Gilles Bisson:** Why, then, would they give you assessments of those numbers that were far in excess of \$40 million if the numbers were not generally in the right direction—the numbers given in Project Vapour and others?

**Hon. Charles Sousa:** We've just read how it's prudent to make assessments and to take risk analysis to ensure that worst-case scenarios are accounted for.

**Mr. Gilles Bisson:** Would you agree that the numbers that the auditor reported were far in excess of \$40 million?

**Hon. Charles Sousa:** We've asked the Auditor General for that clarity. We want to ensure that we understand the full scope and we want to know what it will be in terms of the costs of the ratepayer group. That's what is being determined.

**Mr. Gilles Bisson:** Do you agree that the auditor's numbers, as reported, are far in excess of what the government was trying to say they were?

**Hon. Charles Sousa:** The auditor report is assessing a 20-year impact of the additional costs that would be incurred with the transmission facility—

**Mr. Gilles Bisson:** So, yes.

**Hon. Charles Sousa:** —as will the additional other plants that are being built as well.

**Mr. Gilles Bisson:** How much time, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Hon. Charles Sousa:** We know that all these constructions will cost more money, and it will be applied to the ratepayer base.

**Mr. Gilles Bisson:** Okay, I'll just finish on this point: It's pretty clear that the documents provided to this com-

mittee indicate that the government was in full knowledge that the estimates were far in excess of what the government was reporting.

Members of the government have come before this committee and have given sworn testimony that they believed and they were told and they knew that it was not more than \$40 million where in fact they had been told quite the opposite. That's pretty clear.

The other thing that I just want to turn your attention to is the comment that you make in your opening statement in regard to what the positions of the various political parties were on the gas plants. Let's be clear: Andrea Horwath, in the last provincial election, when asked by the media, was very clear on this. She says she would not rip up a contract, sight unseen, because we didn't know what it was going to cost, both for this particular fiasco that you've created with Mississauga but also for Samsung, because we believed at the time that it was irresponsible to say, "We're going to rip up a contract"—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gilles Bisson:** —without knowing what we were going to expose the public to when it came to cost. So when you stand there and say, as you quoted here, that the commitment was echoed by the PCs and the NDP, I agree with you that the Conservatives did say that they would scrap this particular contract. I'm clear that the Liberals did say that they wanted to scrap this particular contract. But for the record, and to be quite clear, New Democrats in the last election, as stated by Andrea Horwath—the leader of the NDP said that despite what anybody else might have said, the position of the party was that we would not scrap contracts sight unseen, and we would never have built these things there in the first place.

**Hon. Charles Sousa:** If I may clarify, Chair: I was at those very meetings, and the NDP candidate very clearly stated that she supported the relocation of the power facility and that she would stand by this decision.

**Mr. Gilles Bisson:** The individual candidate might have said that, but the position of the party—

**Hon. Charles Sousa:** And she was representing the NDP. If that doesn't account for—

**Mr. Gilles Bisson:** To be quite clear, whatever a candidate says on the stage is one thing. What really works at the end, and what really matters, is what the leader says and what position the party takes.

**Le Président (M. Shafiq Qaadri):** Merci, monsieur Bisson. Votre temps est expiré. Je passe la parole à M. Delaney—20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. First, Chair, I think there are a few comments that the government needs to get on the record here.

I would like the Clerk to kindly circulate a document from the same batch of documents referred to by Mr. Fedeli. The date of this document is February 7, 2012. Frankly, Chair, Mr. Fedeli's redaction rant is ridiculous. There are no numbers missing in this document—

**Interjection:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order.



**Mr. Victor Fedeli:** Chair, the numbers are clearly missing—

**The Chair (Mr. Shafiq Qaadri):** This is a point of fact that you can deal with—

**Mr. Bob Delaney:** The point of this, Chair—

**Mr. Rob Leone:** Even if there is one document that removes those notes—

**Mr. Bob Delaney:** Just pipe down. It's my time now.

**Mr. Rob Leone:** —they were redacted.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, thank you.

Please continue, Mr. Delaney.

**Mr. Bob Delaney:** There are two versions of the same document in the same batch—

**Mr. Victor Fedeli:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order.

**Mr. Victor Fedeli:** He's proving my point that somebody—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli.

Please continue, Mr. Delaney.

**Mr. Bob Delaney:** —and the motion asked, Chair, for all documents, regardless of the version. What Mr. Fedeli did is cherry-pick this version without the footnote, even though he knew that he had the full version with the footnote.

**Mr. Victor Fedeli:** Point of order, Chair—

**Mr. Bob Delaney:** We've caught you—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, point of order.

**Mr. Victor Fedeli:** Thank you for acknowledging me, Chair.

**Mr. Bob Delaney:** We caught you fair and square. You didn't do this properly. You made an allegation without any basis at all.

**The Chair (Mr. Shafiq Qaadri):** Gentlemen. Mr. Fedeli.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, your own colleague has the floor.

**Mr. Bob Delaney:** And it was. You've got both versions, mister. You've got both—

**The Chair (Mr. Shafiq Qaadri):** Gentlemen—

*Interjections.*

**Mr. Victor Fedeli:** Thank you for acknowledging me, Chair. I'm very sorry that we found the document that was redacted.

**The Chair (Mr. Shafiq Qaadri):** Sorrow is not a point of order, Mr. Fedeli. Thank you.

Mr. Delaney.

**Mr. Victor Fedeli:** Sorry we caught you—

**Mr. Bob Delaney:** The documents, as noted, were written well before the settlement was reached in 2012. I also noted that the NDP has asked the minister to speculate on the Auditor General's report on Oakville, which has not been released.

So, just to make sure that we get that on the record, the Toronto Star reported that Etobicoke–Lakeshore candidate Dionne Coley also pledged to fight the plant. The

National Post, on September 29, 2011, reported that the local NDP candidate, Anju Sikka, also “issued statements concurring with the new Liberal cancellation.” That's a direct quote.

Mr. Sousa, it's nice to see you. Thank you for taking the time to be here today. I know it's constituency week, so we definitely appreciate you being here. Was this your first invitation to appear before the committee?

**Hon. Charles Sousa:** Yes, it was.

**Mr. Bob Delaney:** Thank you for showing up the first time we asked you. I think it's an important point to make, that it's your first invitation, because it's a contrast from your former opponent in the 2011 election campaign, Geoff Janoscik. We've invited Mr. Janoscik to appear numerous times before this committee, and he has not shown. We'll speak more about that in a moment.

You obviously became aware during the campaign that your PC opponent, Mr. Janoscik, had committed to the relocation of the Mississauga plant.

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**Hon. Charles Sousa:** Absolutely he did. He sent out robocalls. There were leaflets. There was material. Even the leader of the Conservatives came out and did press conferences. They had pink elephants out by the site. They did a number of interviews reaffirming and stating that they would cancel the power plant—not relocate it—and that they would, furthermore, do it because you can't trust any other party to come through on that promise.

**Mr. Bob Delaney:** Does it surprise you that they try to rewrite history and that your former opponent refuses to appear before this committee?

**Hon. Charles Sousa:** That's unfortunate. Certainly, my opponent and I participated in a number of debates whereupon he was voicing his dissatisfaction and displeasure with the construction potential of the Sherway power plant. Only after we made the commitment to relocate it did he then state, together with the Leader of the Opposition, the leader of the Conservative Party—that's when they only came out stating that they would cancel the power facility.

**Mr. Bob Delaney:** You explained, I think, very clearly why you were opposed to the siting of the Mississauga plant in that original location. I know that you attended all of the public meetings. You worked with the ratepayers. You worked with city council. Is there anything else you want to tell us about why you opposed the plant?

**Hon. Charles Sousa:** Well, in this particular instance—and let me be clear: This power facility, this power plant, was not in my riding. It was actually in the neighbouring riding. But the effects of the cumulative impact of further emissions in that area and the point of impingement would have actually been affecting not just Mississauga but certainly Oakville and Toronto and the surrounding areas. It was literally a stone's throw away from people's homes in that riding. It was close to the hospital and close to a number of establishments but a lot of residential. It was also on a creek bed, and it was close to a park and a play area.



My motivation was to work alongside the community, recognizing the degree of high levels of particulate matter in the community, to ensure that we protected the health and safety of the community. It was in keeping with my effort to ensure that we would protect the Lakeview power facility lands as well, noting that the level of smog days dramatically reduced as a result of the cancellation of that dirty coal plant. Furthermore, less amounts of asthma and respiratory emergency care occurred. So the community benefited greatly from the efforts taken to protect the airshed, protect also the surrounding waterfront communities, and more importantly, it enabled us to protect the surrounding areas in the GTA.

**Mr. Bob Delaney:** How often did you meet with the local residents and the community groups, and what was the nature of that?

**Hon. Charles Sousa:** There were about 14 to 16 town hall facilities. I actually have here with me my website, which tabulates a chronological order of all of the activities I did, all the reports and statements I made, resolutions that I put before the House, things I did in regard to dealing with city council and my ongoing deliberations in the House, around petitions as well, to ensure that not only did we protect the community through the Lakeview power facility that was demolished; we also permanently protected the area from future development—and with the southwest GTA procurement process to again reaffirm that we needed to do proper sitings, appropriate setbacks and take into account cumulative studies so that those communities would be protected, and it would apply to all communities around Ontario.

These are some of the efforts that we were trying to propose and engage in; community engagement is essential on any such things going forward. We listened to the community. We listened to them when we were dealing with Lakeview, we listened to them in regard to the Oakville facility, and we listened to them with Sherway. As I stated, all parties agreed to do the same after we made our decision to relocate.

**Mr. Bob Delaney:** And our local politicians in Mississauga—what type of engagement did you have with city council?

**Hon. Charles Sousa:** We had full support from city council, from the mayor to all the ward councillors. A number of resolutions were put before council so that we could protect the area, to ensure that power facilities, emissions, any new emitters, wouldn't come forward. Changes to the certificates of approval for further emissions were brought to council as well.

We also had great dealings with community advocates, like Dr. Boyd Upper, Julie Desjardins, even Dorothy Tomiuk, from Miranet. We had members from CHIP: Steve Thompson and Tony Jones. We had various active individuals like Irene Gabon, Mike Douglas from the other side of the community, everyone working hard—Sue Shanly was another—all trying to ensure that the community was understood and heard because of the proximity at which these power facilities were being built. There was great engagement by everyone.

In fact, I recall that even the opposition was invited to participate in some of these discussions.

**Mr. Bob Delaney:** Did they ever show up?

**Hon. Charles Sousa:** During the town hall facilities, certainly during the election, none of the PC or NDP candidates actually showed up to any of the rallies. They weren't there. They chose instead not to show and cited some reason. Only after we made the relocation announcement did they then become active by doing robocalls, newsletters and statements.

**Mr. Bob Delaney:** You had the standing of being the sitting member at the time. Your PC candidate, Geoff Janoscik, had he ever approached you, as his local MPP, to talk about the plant or to express his opposition?

**Hon. Charles Sousa:** Never—only after the decision that we took.

**Mr. Bob Delaney:** Right. Yet you were involved long before the 2011 election?

**Hon. Charles Sousa:** I have been consistent since 2007 and prior to 2007; even as a candidate, I advocated for the protection of the Lakeview power facility lands and for the relocation of the Sherway plant. I was consistent prior to being elected in 2007, and when I was elected as MPP, I continued to oppose those facilities. Even when I became minister that term, I continued to oppose those facilities. When I sought re-election, I again reaffirmed the necessity to protect the community. By that point, we already had protected Lakeview; we already had protected Clarkson and Oakville. The Sherway facility was still the one that needed resolution, and as I said, I've been advocating for relocation of that facility since 2007, prior to even being elected. I remained consistent and clear throughout.

**Mr. Bob Delaney:** Well, that certainly lines up with the testimony this committee has heard. For example, Steve Thompson, whom you mentioned, from the Coalition of Homeowners for Intelligent Power, or CHIP, reiterated that point and said:

“Obviously, the Conservatives didn't have a problem, through the meetings that we had with Mr. Yakabuski—he didn't see a problem with the plant. He didn't see a problem with the location of the plant.

“So there's sort of a contradiction going on here....

“Then, all of a sudden, because there's an election, we get Mr. Hudak actually coming to the table and saying, ‘Oh, we're going to help you.’”

When the PCs argue that they opposed the plant from the start, does it seem like they're rewriting history?

**Hon. Charles Sousa:** Actually, if I recall, it was the Conservative government that approved the siting of the Site Global over in Clarkson. There was a proponent there. That never came to fruition.

But even during my petitions, and when I was requesting support from both sides of the House to read those petitions, that didn't occur. Only when the Oakville site was chosen did Mr. Ted Chudleigh appear before the House and say that he and the Conservatives opposed the Oakville plant and the siting of that plant. That was only after the Oakville site was chosen.



**Mr. Bob Delaney:** You mentioned earlier that your opponents made it completely clear that a PC government would cancel the plant, rip up the contract, not look to relocate it.

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**Hon. Charles Sousa:** They never indicated that they would relocate the facility. They just made it clear that they would be the ones who would cancel the facility in Mississauga.

**Mr. Bob Delaney:** Looking back on that commitment and allowing for the robocalls that were made repeatedly in your riding, do you think a PC government could have relocated that plan any more cheaply?

**Hon. Charles Sousa:** If it was their intent to simply cancel the power plant, it would have been extremely expensive. If they had to relocate and if they agreed, as they said they would, to have it moved outside of Mississauga, then they would have incurred the same costs that are being incurred now.

**Mr. Bob Delaney:** When PC leader Tim Hudak testified here, he was asked 28 different times directly about his commitment to cancel the plant, and just evaded it. Have you gotten any feedback from your residents about the political games being played by the opposition?

**Hon. Charles Sousa:** It's obvious that Mr. Hudak made the commitment in Mississauga. I was a witness to it. He stated very clearly that he would cancel the facility. The materials sent by the Conservative Party from various candidates reaffirmed that they would cancel the facility. Through their tweets and their number of robocalls repeatedly, they said it was they who would be able to do it and not the Liberal Party. They really churned up the rhetoric after we made the commitment to relocate those facilities if we got re-elected.

**Mr. Bob Delaney:** Okay, Chair, that will wrap it up for our first round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To you, Mr. Fedeli: 10 minutes.

**Mr. Victor Fedeli:** Thank you, Chair. Minister, we're here to talk about the costs the Liberal government paid to save your seat and who ordered the subsequent cover-up. So far, we've clearly proved, once we got into the unredacted version of the document, that there's a \$900-million number floating around. I asked and my caucus member Lisa MacLeod asked the Premier a combination of 32 times when she knew the number was greater than \$40 million. So far, we've asked the Premier in the Legislature and in this committee 130 times when she knew the number was greater than \$40 million, yet we haven't heard an answer. Can you tell me when you first heard that the number to settle Oakville would be greater than \$40 million?

**Hon. Charles Sousa:** I understand that \$40 million was the amount that was attributed. It was applied to the public accounts and to our books. As I see here and I'm reading this, note 6 does talk about that it was under current negotiations and that it would be dependent on

the outcome of those negotiations. They were obviously putting forward a discretionary amount as a risk to offset if it occurred.

**Mr. Victor Fedeli:** So \$900 million is a number bigger than \$40 million. When is the first time you ever heard that a number greater than \$40 million may be what it costs the taxpayer and ratepayer to settle the—

**Hon. Charles Sousa:** I'm still awaiting the final report from the Auditor General to determine exactly what it's going to cost the ratepayers over the next 20 years. That's what I'm waiting for.

**Mr. Victor Fedeli:** I appreciate that. What I'm asking is: When is the first time you heard that it may be more than \$40 million?

**Hon. Charles Sousa:** I'm told that \$40 million were the sunk costs, and I now understand what you have been apprised of—

**Mr. Victor Fedeli:** No, we understood the \$900 million long before this document, believe me. When is the first time you heard that it may be more than \$40 million to the taxpayer and ratepayer?

**Hon. Charles Sousa:** Let me be clear: I have not been privy to any of these numbers other than what I have been reading and seeing from the work done by this committee. I recognize that the Auditor General has been requested to provide a full assessment of what it will be over the next 20 years. That's what I know.

**Mr. Victor Fedeli:** When you were answering Mr. Tabuns's question, you said that you were briefed on the costs of the gas plant cancellations, but only insofar as past budgets. What do you mean by that, then?

**Hon. Charles Sousa:** I didn't say that at all. I said that \$40 million was applied to the public accounts for the Oakville gas plant, and \$190 million, once it was assessed, was applied as well, to the taxpayer base.

**Mr. Victor Fedeli:** I'll ask you just one more time, then. We've heard from former Minister Bentley that the total cost is \$40 million, period. When did you first hear that it would be more than \$40 million?

**Hon. Charles Sousa:** I don't think it has been determined what the costs will be. Still, these are, as I understand it, very complex, so they haven't finalized what those costs are.

**Mr. Victor Fedeli:** I think it's pretty clear that for months upon months—I can tell you that for months upon months, we've known it's more than \$40 million. You're a member of cabinet. You're the current finance minister. You were on treasury board. You're going to sit there and tell us that you believe it's \$40 million?

**Hon. Charles Sousa:** Well, let me be clear. I've made it clear that I recused myself from treasury board and cabinet during those discussions.

**Mr. Victor Fedeli:** We'll get to that in a minute. You've never heard any other number it may be, other than \$40 million? You're sticking to the \$40 million? You've never heard another number.

**Hon. Charles Sousa:** No, I'm saying that I'm awaiting the Auditor General to come out with their final report.



**Mr. Victor Fedeli:** That's not what I'm asking you.

**Hon. Charles Sousa:** That's what I'm waiting for.

**Mr. Victor Fedeli:** But I'm asking you, when did you hear the number may be more than \$40 million?

**Hon. Charles Sousa:** I don't know what the number is. I know the number of \$40 million. I don't know what any other number is at this point.

**Mr. Victor Fedeli:** So you don't want to answer that. I can see why you don't want to answer that. I can understand—

**Mr. Bob Delaney:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, point of order.

**Mr. Bob Delaney:** The member is asking a cabinet minister to speculate on—

**Mr. Victor Fedeli:** No, I'm not. I'm asking a date. I'm not asking him to speculate; I'm asking him a date—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli—

**Mr. Victor Fedeli:** He can't give us a date. God help our credit rating in this province. We've clearly proved it's over \$900 million—it could be \$900 million. You're not going to answer any questions about that. Let's get back to the cover-up, then.

Go to document 8 in the first pile that I gave you. It's quite deep into the pile; it's the last document, but it's about 10 pages long. It's right after document 7, where you said that we had all the records. Do you see that there? The top right-hand corner, it's document 8. Do you have that?

**Hon. Charles Sousa:** Yes.

**Mr. Victor Fedeli:** Down in the middle, there's a blacked-out area where you can read the text. What does that redacted text say?

**Hon. Charles Sousa:** You're talking about—

**Mr. Victor Fedeli:** Document 8. It's the first page—

**Hon. Charles Sousa:** The first page?

**Mr. Victor Fedeli:** Yes. Page 2 is called 2 of 9, 3 of 9, but the first page doesn't have a page number. It's just document 8.

**Hon. Charles Sousa:** What are you asking for?

**Mr. Victor Fedeli:** I'm asking you to read what it says in the blacked-out portion.

**Hon. Charles Sousa:** I'm having difficulty reading it, but I think it says "unrelated content."

**Mr. Victor Fedeli:** It does say "unrelated content"; you're absolutely right. The next page, then: Again, would you acknowledge it says "unrelated content," and it's blacked out?

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** The next page, a whole bunch blacked out, "unrelated content." The next page, 4 of 9, the whole page is redacted. Do you have that one?

**Hon. Charles Sousa:** Yes.

**Mr. Victor Fedeli:** The entire page is redacted.

Earlier when you were asked a question by Mr. Tabuns, your answer started, "Are we talking about Lakeview or Sherway?" Do you remember saying that to Mr. Tabuns?

**Hon. Charles Sousa:** I do.

**Mr. Victor Fedeli:** Okay. Go down another couple of pages. Now you're going to find an unredacted version that we just received. That first version is an old version that we were given in the 56,000 documents, where it was redacted. Now do you see what used to be redacted? It now says "Lakeview."

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** The next page: "Lakeview site." The next page is Lakeview. That whole page that was covered up on the first one is now exposed here for us to read, and it's all about Lakeview.

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** Can you tell me, in your opinion, why someone would have done this to an entire page discussing something to do with the power plant closures?

**Hon. Charles Sousa:** I can't speculate. I don't know.

**Mr. Victor Fedeli:** But you do acknowledge that this page 3 is completely redacted, and on page 3 of the one that we just received, it is all here? Would you acknowledge that?

**Hon. Charles Sousa:** Yes. I'm not sure of the timing or the dates on which this occurred, though. I don't know if there was sensitivity to negotiations prior or not—

**Mr. Victor Fedeli:** No, no, no, no—

**Hon. Charles Sousa:** You're asking me to—I don't know the answer. I don't know.

**Mr. Victor Fedeli:** No, no, there's no sensitivity in these. These documents are the documents we received where we were told they were unredacted where it's clearly redacted. Now in the latest document dump, we can see what was unredacted. It's clearly important information to us. It talks about a meeting between Minister Bentley and Mayor Hazel McCallion, talking about the Lakeview site.

**Hon. Charles Sousa:** Okay.

**Mr. Victor Fedeli:** Why do you think they would have covered that up?

**Hon. Charles Sousa:** I don't know. I don't know why you received—maybe it was because the request initially was regarding the Greenfield South power plant facility. I presume that's what you asked for; that's probably what they gave you.

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**Mr. Victor Fedeli:** In the talking points—you've just kind of opened up a little door here about the talking points. We have sworn testimony that documents have been pulled out that clearly say SWGTA, southwest GTA. Are you aware that your Ministry of Energy had asked the Ontario Power Authority to remove documents?

**Hon. Charles Sousa:** I'm not aware.

**Mr. Victor Fedeli:** Okay. I'm going to turn the questioning over to Rob Leone.

**The Chair (Mr. Shafiq Qaadri):** Mr. Leone, one and a half minutes.

**Mr. Rob Leone:** Okay. Minister, what budget year are these costs found in?

**Hon. Charles Sousa:** Say again?



**Mr. Rob Leone:** For the cancellation costs of the Oakville and Mississauga plants, what budget year are they found in?

**Hon. Charles Sousa:** If I recall, the ones for the \$190 million is in 2013, and the \$40 million was in 2012. I don't recall the specific dates, but they were already accounted for.

**Mr. Rob Leone:** So part of it was covered in this budget cycle, and part of it was covered in the last budget cycle. Is that—

**Hon. Charles Sousa:** It was already incorporated in the previous public accounts.

**Mr. Rob Leone:** Was it written in the budget? Do you recall?

**Hon. Charles Sousa:** It was already written off. It was already applied to the costs.

**Mr. Rob Leone:** We asked Minister Bentley, in estimates committee, where are the estimates for the cancellations of the Oakville and Mississauga gas plants, and he couldn't answer that question. It's why, basically, we are here today.

**Hon. Charles Sousa:** Okay.

**Mr. Rob Leone:** So where in the estimates are they?

**Hon. Charles Sousa:** Well, I understand that those are being determined and they'd be applied to the ratepayer.

**Mr. Rob Leone:** But we have this document here that suggests that your upward number is \$900 million. That's the estimate.

**Hon. Charles Sousa:** Okay.

**Mr. Rob Leone:** So why wouldn't that be included in the budget?

**Hon. Charles Sousa:** Well, because it has already been negotiated and resolved and it was applied to the budget, so resolution was had.

**Mr. Rob Leone:** So where did the money come from? What envelope did it come from in order to pay—

**Hon. Charles Sousa:** Oh, it probably came through our contingency funds, then it was applied.

**Mr. Rob Leone:** How much are contingency funds? What's the value of the contingency fund?

**Hon. Charles Sousa:** Oh, there's—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Leone.

Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Minister, in the fall of 2011, Forum Research was noting your seat as one of the ones that was at risk. How relieved were you when Don Guy and Dave Gene got in touch with you and said, "Hey, we're finally going to cancel this plant"?

**Hon. Charles Sousa:** Let me be clear: I was doing my own internal polling and, recognizing where I stood, my plurality was even greater in my second term than it was in the first. People in the community recognized that I had stood by them and I was doing my utmost to protect their interests. I didn't feel that I was in a tight race at all.

**Mr. Peter Tabuns:** So Don Guy and Dave Gene, when they phoned you, you thought these were just technical people telling you that, "Gee, finally we realized we

don't need this plant"? It had nothing to do with your election?

**Hon. Charles Sousa:** Mr. Tabuns, this was about something that I had been advocating for since 2007. I had been standing by the community, looking to relocate a power facility that wasn't even in my riding. This was not in my riding. I was there to protect the interests of the communities and the surrounding communities as well. That's what motivated me. This was not an election cycle decision on my part.

**Mr. Peter Tabuns:** Well, I have to say, if Don Guy and Dave Gene call you about a decision in the middle—sorry, in the dying days of an election, when Forum Research is saying your seat is at risk, I think everyone in this province thinks that it's a question of making an election decision, because your government had a lot of opportunities to cancel this plant. As you know, this plant became economically non-viable a few years prior to 2011. They have to renegotiate the contract. It would have been very cheap to just say, "Hey, we're just going to let this lapse. We're going to let it go." You didn't do that. You had an opportunity before they got financing or started construction to stop the plant. You didn't do that. The report on power needs in the southwest GTA had come forward, showing, according to what we've been told, you didn't need power in this area anymore.

You wait until the dying days of an election campaign to cancel something. That says to everyone in this room and in this province that it was a partisan decision to save your seat and possibly a few others. How can you say otherwise?

**Hon. Charles Sousa:** Well, I can say otherwise because of my track record and the fact that I've been fighting for the community and the cancellation and the removal of this power facility since 2007. I've been consistent throughout, and I've been doing so with the surrounding communities.

You have just reaffirmed that it was the appropriate decision to make, though, because there were issues and concerns as to why that power facility should not be built. That decision was made, and it was the appropriate decision to make.

**Mr. Peter Tabuns:** Well, we've had the former Premier and the current Premier apologize for all this. I don't see how you can say credibly that this was not a campaign decision. I mean, it's interesting—

**Hon. Charles Sousa:** Excuse me, I've been at it since 2007. I had been advocating for the closure of the power facility long before I was even a member of this House, and I did so consistently when I became an MPP, when I became a minister and when I became a candidate again. I will continue to fight for the communities, as I will right throughout Ontario on this very issue.

**Mr. Peter Tabuns:** Your campaign team decided this was needed. They even set it up so that you would do a media availability on Saturday without the provincial media, just with the local Oakville and Mississauga and Etobicoke media. Why were you not trying to put this on a larger stage? We were talking about a lot of money.



This wasn't a minor announcement; this was a major announcement.

**Hon. Charles Sousa:** The announcement was made on a Saturday. A lot of people attended. It was a celebrated announcement. The Conservatives and the NDP also supported that call, and they all agreed that this was something that was the appropriate decision to make.

**Mr. Peter Tabuns:** What did Don Guy and Dave Gene tell you was the message you were going to convey?

**Hon. Charles Sousa:** It was a relocation of the power facility if we got re-elected. That was the idea.

**Mr. Peter Tabuns:** That was all they had to say to you?

**Hon. Charles Sousa:** The government had acknowledged that more had to be done. I had been fighting, throughout the course of those years, to find ways to have that facility moved to a more appropriate location, and the commitment was made by all three parties that that was the appropriate thing to do, and any one of them would have—I would hope—fulfilled that promise.

**Mr. Peter Tabuns:** I'm going to turn the questioning over to my colleague. He has some points he'd like to raise.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson.

**Mr. Gilles Bisson:** I can't believe what you're saying. Last year, we had the former Minister of Finance, at estimates, say this was a political decision. We had the former Premier appear before this committee and publicly say this was a politically motivated decision. We've got the current Premier, Ms. Wynne, saying it was a politically motivated decision. And you're saying no, it was altruistic, it was just great policy? Do you talk to the Premier? Are you connected in some way to what she—

**Hon. Charles Sousa:** I think the Premier and even the previous Premier have said this: that it was a decision made by politicians from all parties.

I had been advocating for the relocation all along, and it was the right decision to make, and it would have—these are decisions that I have been saying should have been made earlier.

**Mr. Gilles Bisson:** Are you now in concurrence with the Premier, the former Premier and the former finance minister that this was a political decision?

**Hon. Charles Sousa:** They've all said that this was the right decision to make.

**Mr. Gilles Bisson:** Are you in concurrence that—

**Hon. Charles Sousa:** They said it was a decision that was appropriate to protect the interests of the community, and they agreed that that was what should be done.

**Mr. Gilles Bisson:** Listen, I'll leave it to the Premier to deal with you about what you say at this committee, but you're off-step with what she and others have said, because everybody who has appeared before this committee has admitted this was a politically motivated decision in order to save a number of seats in your area. You tend to have a very different view of what that is, and I'll leave it up to the Premier to decide how she deals with you.

I'm going to go back to the questions that I had previously. It is clear by the documents that have been submitted to this committee that this government tried to withhold, and it took a motion of the House for you guys to finally release the documents. It's clear that the cabinet, that the ministers responsible, that the deputy ministers responsible in those ministries had numbers that indicated that it was going to cost far in excess of \$40 million to cancel this particular gas plant. Then you've got the Premier and others who are saying that it was only \$40 million. It seems to me that there is a gap in credibility, because it's clear that the cabinet had the numbers that said it was more than \$40 million, and here we are now, with you guys sticking to your line, saying, "Oh no, that's all the information they would have."

Would you agree that the cabinet had this information—and wasn't it responsible for them to at least let the taxpayers know what the actual estimates were, rather than trying to put the numbers at a lower number to make themselves look better?

**Hon. Charles Sousa:** I can comment on what my motivation was. You made reference to that. I was very clear, consistently, since 2007, what should be done. I even put resolutions before the House to provide better siting and to ensure that we have—

**Mr. Gilles Bisson:** Minister, we all know—

**Hon. Charles Sousa:** In regard to the numbers and the determination of the costs, we're awaiting those costs, and we've recognized that we need to—

**Mr. Gilles Bisson:** Let me put it this way: As Minister of Finance, if your officials came to you and said, "I estimate that the cost of something is going to be \$200 million," would you go out and say, "I think the costs are going to be \$50 million"? Would that be responsible?

**Hon. Charles Sousa:** I don't believe that's what it says. I believe—

**Mr. Gilles Bisson:** No, no, I'm asking you a hypothetical.

**Hon. Charles Sousa:** But I'm reading it.

**Mr. Gilles Bisson:** I'm asking you a hypothetical: If the ministry staff—

**Hon. Charles Sousa:** I'm not going to answer a hypothetical; I'm going to answer—

**Mr. Gilles Bisson:** I'm asking you a hypothetical, Minister—

**Hon. Charles Sousa:** I'll respond to what I'm reading.

**Mr. Gilles Bisson:** Let me put the question; then, you can answer.

**Hon. Charles Sousa:** Okay.

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**Mr. Gilles Bisson:** The question is: If your officials came to you and said that the cost on something that you're about to do is going to be—

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, we don't have to answer hypotheticals in this committee.

**Mr. Gilles Bisson:** I can put whatever question I want, Speaker, and if he chooses to respond, that's him. It's my time.



If the ministry officials were to come into your office and say, "I estimate the cost for the following initiative is," let's say, "\$200 million to \$300 million," would you reveal that information or would you try to lowball the information? If you did, what the heck would that all be about?

**Hon. Charles Sousa:** What I can do is comment on what I'm reading. I'm reading here that precautions were taken to assess possible risks given potential negotiations to determine what the proper outcome would be.

**Mr. Gilles Bisson:** So then—

**Hon. Charles Sousa:** Prudent efforts were made, negotiations were had, and resolutions were made—

**Mr. Gilles Bisson:** So you're saying it's prudent—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gilles Bisson:** Okay.

**Hon. Charles Sousa:** —and the amounts that were assessed for that were \$40 million to the one and \$190 million to the other one.

**Mr. Gilles Bisson:** So, you're saying that it's prudent on the part of government not to release the actual numbers that they were given as being estimated for the costs of cancellation?

**Hon. Charles Sousa:** Mr. Chair, I'm not going to speculate on hypothetical responses.

**Mr. Gilles Bisson:** You're the one who's saying that it's prudent.

**Hon. Charles Sousa:** Do you want to ask me about what I know? I'll answer that.

**Mr. Gilles Bisson:** Is it prudent for a government not to release the actual estimates as reported to them when they were given? Is it prudent to estimate a number that is substantially lower?

**Hon. Charles Sousa:** Chair, what I'm reading here is what was assessed and what was determined. In the negotiations, they came out with the appropriate numbers. Those were applied to public accounts and to our books.

**Mr. Gilles Bisson:** I would argue—

**Hon. Charles Sousa:** Going forward, we're taking the necessary measures to be open and transparent, to get the Auditor General to declare exactly what the numbers should be.

**Mr. Gilles Bisson:** Your definition of "prudent" leaves a lot to be desired, I must say.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. Mr. Sousa, what was your margin of victory in 2007? Do you remember?

**Hon. Charles Sousa:** Around 4,000, I believe.

**Mr. Bob Delaney:** And two years ago, in 2011?

**Hon. Charles Sousa:** Over 6,000, or thereabouts.

**Mr. Bob Delaney:** Over 6,000? That wasn't a close election, then.

**Hon. Charles Sousa:** Neither one, no.

**Mr. Bob Delaney:** Did your seat need saving?

**Hon. Charles Sousa:** Let's be clear—

**Mr. Rob Leone:** That's a hypothetical question.

**The Chair (Mr. Shafiq Qaadri):** No, it's not.

**Hon. Charles Sousa:** —I am motivated by a desire to work for the community, and I'm just doing my best as their representative.

**Mr. Bob Delaney:** The reason I asked that question is that Mr. Tabuns pointed out that Forum Research data suggested that maybe your seat needed saving. Are you aware that Forum Research also predicted that Rocco Rossi would be the mayor of Toronto and that Wildrose would be the government of Alberta?

**Hon. Charles Sousa:** There you go. My plurality—my percentage—actually was well above most.

**Mr. Bob Delaney:** What cabinet portfolio did you hold at the end of the 39th Parliament in 2011?

**Hon. Charles Sousa:** I was Minister of Labour.

**Mr. Bob Delaney:** And that means that you were not the Minister of Energy or the Minister of Finance, obviously.

**Hon. Charles Sousa:** That is correct.

**Mr. Bob Delaney:** Okay. Mr. Fedeli went on at some length about a redacted document, of which an unredacted version contained references to the Lakeview Generating Station. When was the Lakeview Generating Station closed?

**Hon. Charles Sousa:** I believe the Lakeview Generating Station was demolished in 2007 or thereabouts, prior to the election.

**Mr. Bob Delaney:** So in other words, it was closed before you were ever elected.

**Hon. Charles Sousa:** That's correct.

**Mr. Bob Delaney:** Okay. Earlier, on April 8, cabinet chair Peter Wallace said, in part, "I wish to confirm for the committee my continued belief that good-faith efforts were made to provide the information responsive to the committee's order and that the redactions removed only information that appeared to be unrelated to that order."

He further said, "It is my belief that the redactions made to the documents I reviewed were the result of that interpretation and that at no time was there any attempt or decision to redact or withhold information that was otherwise responsive to the order of the committee."

He also said, "I have decided it would be in the public interest to provide an electronic copy of the two sets of records reviewed by my office. Each set of records contains the redacted documents as provided to the Legislature, immediately followed by the same unredacted document."

The documents that Mr. Fedeli was carrying on about referred to the closure of a power plant that took place before any of the controversy erupted around either the Oakville or Mississauga gas-fired generating plants, and the closure of a plant that was complete before you were elected. Correct?

**Hon. Charles Sousa:** That's correct.

**Mr. Bob Delaney:** Thank you.

**Mr. Victor Fedeli:** Point of order. A point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli on a point of order.



**Mr. Victor Fedeli:** Thank you, Chair. Thank you for acknowledging my point of order, Chair. In the un-redacted version, it clearly states—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, that is not a point of order.

Mr. Delaney.

**Mr. Victor Fedeli:**—there was an expectation that a new natural gas plant would—

**The Chair (Mr. Shafiq Qaadri):** I would invite all of you to actually review what points of order are.

**Mr. Bob Delaney:** Earlier, both the NDP and the Conservatives have talked about the testimony given by Premier Wynne, who testified before this committee and spoke about the siting of the Mississauga and Oakville plants. She testified that energy experts were responsible for siting the plants, but the role of the elected officials was to listen to the communities and make sure these local voices were being heard. Her words were: “There was advice that was given, there was siting expertise, but ... the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants.”

With regard to some of the comments made about the Premier and the comments that you’ve made, would you agree with the Premier’s characterization, and does that describe the role that you took through the process?

**Hon. Charles Sousa:** Yes. The Premier and the members of the community were listened to, and they recognized that more community engagement should have been had. That engagement occurred. Other initiatives came forward to reaffirm the improper siting of that facility, given the information that was provided, and we listened. And as I said, all parties agreed to that decision as well, to have it moved.

**Mr. Bob Delaney:** The former energy minister, Chris Bentley, was here to testify before the committee, and he spoke about the very difficult situation that he was put in, in terms of disclosing documents as opposed to protecting the public interest during ongoing negotiations.

I was wondering if perhaps you could share with the committee your views on the allegations made by the opposition that Mr. Bentley may have acted in any manner other than in the public interest.

**Hon. Charles Sousa:** Mr. Chris Bentley is a very upstanding individual who I know worked his utmost for the benefit of the public. He operated with great integrity at all times. To the best of his knowledge, he provided what he could. If he stated that there were some sensitive negotiations under way that precluded certain things from being released at that very moment, it was proper for—and presumably, it was him trying to protect the interests of the taxpayer and the public.

I have a lot of confidence in Chris Bentley, and I appreciate the hard work. I’m disappointed by the attacks that he has had to undergo by the opposition, given that he only did what he needed to do, to protect the people of Ontario.

**Mr. Bob Delaney:** Two questions of clarification: Mr. Leone earlier was asking where the original sunk costs

appear on the books. Is it the case that the \$40 million for Oakville was reported in the 2012-13 public accounts?

**Hon. Charles Sousa:** That is correct.

**Mr. Bob Delaney:** And the \$190 million for the Mississauga plant in the 2011-12 public accounts?

**Hon. Charles Sousa:** That’s correct.

**Mr. Bob Delaney:** Okay. We just cleaned that one up.

I think that everybody here agrees that the Mississauga gas plant was not correctly sited. We’ve all talked about the fact that all three parties were committed to not building the plant, if elected. Part of this committee’s mandate is to report back to the House with some concrete recommendations related to the siting of these plants in the future.

You actually worked first-hand with the local residents over a considerable period of time and are one of the few people who have appeared before us who has had detailed interactions with the community. Given your expertise and your experience, would you have any recommendations to share with the committee on how future sites for energy infrastructure should be selected?

**Hon. Charles Sousa:** Well, I appreciate that we need to do a much better job of working alongside members of the community. As I mentioned, I sat on the Clarkson airshed advisory committee, that came forward with three reports citing the degree of particulate matter in the communities.

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I also worked closely with the Petro-Canada liaison committee, talking about emissions and the degree to which some of those industrial sites were having an impact on the region.

As I noted, we also had Dr. Balsillie come forward with the airshed advisory board, which provided a recommendation to the Minister of the Environment citing the ways we should proceed, going forward, to protect communities against any further emitters that would be suggested for the area.

The resolution that I put forward in the House also talked about a cumulative impact study prior to making such decisions, noting that we needed to assess the degree to which further emissions would impact on a community. I believe my colleague Kevin Flynn also put forward a setback recommendation so that further power plants wouldn’t be able to be in close proximity to homes. So all of these things are being taken into consideration for further legislation so that we protect communities right across the province of Ontario.

**Mr. Bob Delaney:** In the last minute, is there anything that you want to say that you hadn’t had a chance to get on the record?

**Hon. Charles Sousa:** Well, I just wanted to express my appreciation for the work being done by the individuals around this room, as well as the Auditor General. We want full disclosure. We want to have a full assessment of the impacts. More importantly, we want to make certain that, going forward and in the future, proper sitings of future facilities are made. We’ve done over 17. The previous Premier made note that these two were



done incorrectly. So we have to ensure that such things don't happen again.

I'm pleased that, over the course of the six years that I've been advocating alongside my community with very prominent advocates and community leaders, we listened. We listened to ensure that we protect the Lakeview lands from future—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Sousa, for your presence and testimony. I respectfully and officially dismiss you.

Gentlemen and lady, we will have a couple of issues to deal with, committee business. The first is that I've directed the Clerk to prepare a 10-page document on what exactly points of order are. They will be distributed at our next meeting. None of those pages have been redacted; you'll be pleased to know.

We're also in receipt of 44 boxes of material in response to Mr. Fedeli's motion, previous material from the cabinet office, the Ministry of Finance and the Premier's office. You can determine the actual number of documents. My suggestion is one USB key per caucus, if that's suitable.

Some of those, by the way, I believe are confidential, protected, privileged etc., so I'd just invite you to peruse them, and before public release, maybe just consult the committee. Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you, Chair.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli first.

**Mr. Victor Fedeli:** I acknowledge the one USB key, and I think that's fair. Is this something that we can share with our team, our staff—the confidential documents—or not at this point?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Most of the documents aren't confidential—

**Mr. Victor Fedeli:** They are?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** They are not, but there are little bits and pieces from two of them. I can hang on to them, and then the committee can decide, in addition to the ones from last week. We can decide, but I can distribute the public ones for next week.

**Mr. Victor Fedeli:** What I'm going to suggest is, because we are going to eventually ask for all documents to be released, period, I'd like to propose that we get all of the documents with the confidential ones pulled out, just for the time being. Let's deal with the confidential documents, either now or later, but deal with them all together. We're going to ask for all documents to be released publicly, whether this is the place or not.

**The Chair (Mr. Shafiq Qaadri):** Okay, Mr. Tabuns or Mr. Bisson.

**Mr. Peter Tabuns:** Two points: The first is that if it's put on a USB key, we need the documents to be electronically searchable.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I think they were, actually. Your motions are saying "in a searchable electronic PDF," so I've gotten a hard

copy of 44 boxes, and I've also got a USB stick. I'm assuming they are searchable because that's what the motion had said and requested.

**Mr. Peter Tabuns:** Okay. We differ with the Conservatives on this point: We think all the documents should be in there.

**Mr. Victor Fedeli:** May I, Chair? Actually, I brought a motion forward asking about the release of confidential—was it only up to that point back, or for the future?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes, because that's what you had cleared in your motion.

**Mr. Victor Fedeli:** So do we want to take that motion and remove that for these documents, or do we want to look at them first?

**Mr. Peter Tabuns:** No, we want them all.

**Mr. Victor Fedeli:** That's my point. Do we want to take that motion and reissue that motion today about—

**The Chair (Mr. Shafiq Qaadri):** It doesn't have to be a motion. We could just agree. I take it it's all documents, period?

**Mr. Peter Tabuns:** Correct.

**Mr. Victor Fedeli:** We're going to want all documents—

**The Chair (Mr. Shafiq Qaadri):** But I mean now.

**Mr. Peter Tabuns:** Now.

**Mr. Victor Fedeli:** Does that include the one you're holding in that envelope?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** This is just transmittal letters. Yes—

**Mr. Victor Fedeli:** No, no, no, not that envelope, the envelope—you're holding confidential documents in an envelope, yes?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes; in my office, yes.

**Mr. Victor Fedeli:** Do we want to include that pile?

**Interjection:** Yes.

**Mr. Victor Fedeli:** Without any discussion?

**Mr. Peter Tabuns:** Yes.

**Mr. Victor Fedeli:** Okay. I'm good with that. I'm good to have everything.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Perfect. I'll get them to you as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Any other issues?

**Mr. Victor Fedeli:** So do we declare them open?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** It's agreed—agreement. If the majority of the committee has agreed, I will get them to you as soon as possible.

**Mr. Victor Fedeli:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

Any further business? The committee is adjourned. Thank you.

*The committee adjourned at 1036.*











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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 28 May 2013

# Journal des débats (Hansard)

Mardi 28 mai 2013

**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

Privilèges des députés





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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 28 May 2013

Mardi 28 mai 2013

*The committee met at 1500 in room 151.*

## MEMBERS' PRIVILEGES

HON. BOB CHIARELLI

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy to order. As you know, we're here deliberating on the energy infrastructure of Ontario. I invite our first witness, the Honourable Bob Chiarelli, Minister of Energy for the province of Ontario, to be sworn in by our Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Bob Chiarelli:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Chiarelli. You know the drill; you have five minutes in which to make your opening address. I invite you start now.

**Hon. Bob Chiarelli:** Thank you. I was sworn in as Minister of Energy on February 11, 2013. With respect to the decision to relocate both the Mississauga and Oakville gas plants, I had no direct involvement in these decisions. I was present at a number of cabinet and treasury board meetings that involved the Oakville or Mississauga gas plants. I am happy to provide these dates to the committee.

In terms of document disclosure, I was not involved with the production of documents for this committee prior to February 2013. On the evening of February 20, I was informed by my deputy minister and chief of staff that the Ontario Power Authority had located additional documents. I was disappointed that these documents were not disclosed originally. I had no prior knowledge that document searches were still ongoing or that more documents were in the possession of the OPA.

I called the chair of the OPA the following morning to receive an explanation on this issue. On February 21, at the first available opportunity, I informed the House that these documents were being tabled immediately.

Following question period on this same day, at my request, the CEO and the chair of the OPA both appeared before the media to discuss the document disclosure. I am tabling a transcript of this media availability to the committee.

During my time as Minister of Energy, I received cost estimates for the relocation of both plants from the experts at the OPA through the ministry. Our office relies on the experts at our agencies to produce these cost estimates.

Through foundational briefings led by ministry staff, I received the \$40-million sunk cost figure for Oakville and the \$190-million sunk cost figure for the relocation of the Mississauga facility. In the interest of transparency, I have also tabled that briefing with the committee.

On March 25, I received a briefing from my chief of staff on the OPA's updated numbers for both the Mississauga and Oakville facilities. At that time, the OPA was working with the auditor as he prepared his report on the Mississauga facility. The OPA provided the government with updated cost estimates to better reflect the perspective the auditor was taking in his calculations.

On March 25, the OPA provided my office with an updated estimate stating that the cost for the Oakville relocation could range from \$33 million to \$136 million. These estimates have previously been released to the committee.

It was also at this briefing that I received a high-level overview of the auditor's draft Mississauga costs. I did not review a copy of the auditor's draft report.

I formally met with the Auditor General on April 11, 2013, to discuss his findings. It was clear that the auditor took a longer-term view of the costs and savings for the relocation of the Mississauga facility. That's why, on April 22, I requested OPA CEO Colin Andersen to come to committee to provide the OPA's updated estimate of the costs of relocating the Oakville plant. I am pleased that he eventually appeared before committee and provided this update.

In the interests of transparency, my office received these numbers just 30 minutes before committee commenced, on April 30.

It's clear that these are complex calculations that continue to change. That's why, earlier, we had asked the Auditor General to expand his work to include the Oakville facility, and we look forward to his report.

In the meantime, I encourage the committee to focus its attention on making recommendations to improve the siting of our large-scale energy infrastructure. On May 6, I asked the OPA and the IESO to report back to the ministry with recommendations on developing a new



integrated regional energy planning process that would focus on how large energy infrastructure projects are appropriately sited across Ontario. I have tabled this letter with the committee as well. The process will take into account recommendations on energy project siting made, or that may be made, by the Standing Committee on Justice Policy.

I'm happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Chiarelli. I invite Mr. Fedeli to please begin. You have 20 minutes.

**Mr. Victor Fedeli:** Well, thank you, Chair; much appreciated. Welcome, Mr. Chiarelli.

Today the privacy commissioner said she was baffled at the fact that the top McGuinty staff were deleting gas plant documents. She goes on to say, "It strained credulity that no one thought maybe they should retain some of the emails, that there are retention obligations and things of that nature." She continues, "Suffice it to say I was not pleased, putting it mildly, and you will see that reflected in the report that comes out."

Do you have any comments about the privacy commissioner's incredulity at the action of the staff of the Premier's office?

**Hon. Bob Chiarelli:** Well, there are rules and requirements with respect to documents, and they're subject to the commissioner's oversight. I'm not aware of the details surrounding that evidence, although, in a sort of higher level, I'm aware that that evidence was given here, and I've been made aware of the commissioner's remarks today.

The issue is where it should be. It's before the commissioner. I think it's clear from her remarks that she will be dealing with it in due course, and the government will be dealing with her report when it is filed.

**Mr. Victor Fedeli:** You say there are rules and requirements with respect to documents. Do you believe that your ministry has followed those rules and requirements accurately from day one?

**Hon. Bob Chiarelli:** I know that my chief of staff is aware of that requirement and has been aware of that requirement. It's my understanding that, through his oversight, our ministry has been compliant.

**Mr. Victor Fedeli:** Can you tell me why we received redacted documents from your ministry, then, in the past?

**Hon. Bob Chiarelli:** No, I cannot tell you that.

**Mr. Victor Fedeli:** Okay.

**Hon. Bob Chiarelli:** I don't know the details around the redactions, and I haven't looked at individual documents.

**Mr. Victor Fedeli:** Do you think the OPA has followed the rules and requirements with respect to the documents?

**Hon. Bob Chiarelli:** I can only take what the OPA has provided to us: certainly, the evidence that they have provided, both at the media availability that they held earlier in February, where they made themselves available for half an hour—unlimited time period to answer all questions from the media. The transcript has

been provided to you. Certainly, Colin Andersen was available to give evidence as well.

**Mr. Victor Fedeli:** Media availability is one thing, but swearing under oath in testimony here is another. We've been told that they have been asked by the Ministry of Energy to remove certain documents. They did indeed acknowledge that they did remove those thousands of documents, and then, on further contemplation, had a second document dump where they fessed up and turned them over to us. What comment would you have on that?

**Hon. Bob Chiarelli:** First of all, I want to repeat that I wasn't minister at the time those events were happening—

**Mr. Victor Fedeli:** I understand.

**Hon. Bob Chiarelli:** —and any answers that I give would be based on information that I've received second-hand, not first-hand, from people briefing me from evidence that has been before this committee. So I really can't comment in detail on that.

1510

**Mr. Victor Fedeli:** So after me telling you of their sworn testimony, where they told us they removed documents at the request of the Ministry of Energy—

**Hon. Bob Chiarelli:** Can you tell me who gave that evidence?

**Mr. Victor Fedeli:** Several.

**Hon. Bob Chiarelli:** Could you give me their names, please?

**Mr. Victor Fedeli:** There were several.

**Hon. Bob Chiarelli:** Could you give me their names?

**Mr. Victor Fedeli:** I'm asking the questions here. There were several of them who gave us that testimony, and that's sworn testimony—if you stick around for the next hour and a half, you might get a little bit more information, because there's another witness coming in, one of the lawyers.

**Hon. Bob Chiarelli:** I appreciate that advice. Thank you.

**Mr. Victor Fedeli:** So let me ask you: You suggested that we ask the AG to expand the scope to include Oakville. Can you tell me who "we" was?

**Hon. Bob Chiarelli:** My understanding—

**Mr. Victor Fedeli:** It was in your opening statement.

**Hon. Bob Chiarelli:** Sorry?

**Mr. Victor Fedeli:** It was in your opening statement.

**Hon. Bob Chiarelli:** It was the government.

**Mr. Victor Fedeli:** Let me tell you who the "we" was. We, the members of the PC Party, and we, actually the members of the NDP, fought before prorogation to have the Auditor General look into the Oakville plant. It was you, the Liberal government, who thwarted that all day long on the last day of committee, who, up until only minutes, bare minutes, before the clock ran out, for the committee to sunset—we, the opposition, were told that unless we accept only Mississauga and not Oakville, that they would have another recess, which would run the clock out, and we would get neither. How do you square that?

**Hon. Bob Chiarelli:** Did I understand you to say that it was requested by the Liberals?

**Mr. Victor Fedeli:** No. I'm suggesting to you that it was requested by the PCs and by the NDP, by the opposition members, that we have hearings by the Auditor General for both Oakville and Mississauga, and that if we didn't remove Oakville from the hearings, we would not get Mississauga hearings; we would get none. Do you acknowledge that? Do you remember that occurring?

**Hon. Bob Chiarelli:** No, I can't acknowledge that, and I don't remember that.

**Mr. Victor Fedeli:** I'll provide that to you. We've asked for that Hansard—

**Hon. Bob Chiarelli:** Thank you. I would appreciate that.

**Mr. Victor Fedeli:** —to come to us at the committee. We have received it, and I'll make sure that our office forwards that to you.

Sadly, we didn't win that day. The Liberals thwarted us getting to the truth of Oakville back then. So here we now wait for those numbers.

Let me ask you, then: On March 20, 2013, you stated, "We have accepted the fact that it was a political decision to relocate those gas plants." What did you mean by that?

**Hon. Bob Chiarelli:** What I meant by that was that on September 24, 2011, for example with respect to Mississauga, the Liberal Party issued a press release stating that the plant will be relocated if they're re-elected as government. It was an election promise. It was a political decision. We have acknowledged that and the Premier has acknowledged that.

**Mr. Victor Fedeli:** Okay. So you would disagree then—when Dwight Duncan was in estimates, when he said that the decision to cancel the Mississauga plant was inherently political because it was done in a campaign at the time when you were down in the polls. So you disagree with what your former energy minister and former finance minister said?

**Hon. Bob Chiarelli:** I think it's a matter of public knowledge that in the 2011 election campaign, three political parties made commitments to cancel the gas plants. I don't think there's any evidence to the contrary.

**Mr. Victor Fedeli:** So you disagree with Mr. Duncan. I watched him as he said that, that, "We were down in the polls, and it was done in a campaign." So you disagree with his comment about that.

**Hon. Bob Chiarelli:** The three parties made promises in the election campaign.

**Mr. Victor Fedeli:** So do you agree with Premier Wynne or with Mr. McGuinty and Minister Sousa? The Premier says it was political. Mr. McGuinty and Mr. Sousa argue that it wasn't. Which one was it?

**Hon. Bob Chiarelli:** I actually haven't been parsing all the evidence that's coming before this committee. What I'm trying to do as minister is move the ministry in significant directions which require action. Quite frankly, I have not been reading the transcripts and I have not been following all the evidence, so asking me to confirm or not confirm what other people have said—you know, I

probably can't give you very accurate answers. I can tell you what I know from my knowledge.

**Mr. Victor Fedeli:** So you don't think these gas plant scandal hearings need action?

**Hon. Bob Chiarelli:** Absolutely. I think that all parties have agreed that there are serious issues in the system with respect to siting energy infrastructure. As minister, I'm taking action as quickly as I can to correct those. The Premier has said and acknowledged as well that there have been siting problems, and regrets that those existed. I can say that, over the course of the last seven or eight years, there have been tremendous successes in the energy sector, and there have been some bumps in the road. Certainly one of the bumps in the road has been the issue of siting energy infrastructure.

**Mr. Victor Fedeli:** Yes, a billion dollars is a pretty big bump.

You also said in the House, "We have nothing to apologize for." If that's the case, Minister, then why did the Premier feel it was necessary to publicly apologize?

**Hon. Bob Chiarelli:** Well, I answered that, I believe, in a scrum. I understood the question to be, would I want to apologize?

**Mr. Victor Fedeli:** So you wouldn't?

**Hon. Bob Chiarelli:** It's a decision for the government to apologize; I don't speak for the government. The Premier has spoken for the government on that issue.

**Mr. Victor Fedeli:** So you don't apologize?

**Hon. Bob Chiarelli:** I concur, as I've said in the past, personally. I regretted that the decisions had to be made because of bad siting, but it has always been in the context that all three parties had made the promise to cancel and relocate the gas plants.

**Mr. Victor Fedeli:** Well, I would find it unusual to hear the sentence from you that the Minister of Energy doesn't speak for the government.

Excuse me, Clerk. Are our documents handed out?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes.

**Mr. Victor Fedeli:** If you look at document number 1, it's an order in council document. Do you see it there?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** Do you see your name on it?

**Hon. Bob Chiarelli:** Tell me where my name is. I'm having trouble picking it out.

**Mr. Victor Fedeli:** "The membership of the Management Board of Cabinet and the treasury board (b) as follows:"

**Hon. Bob Chiarelli:** What page is that on here?

**Mr. Victor Fedeli:** PC doc 1. It looks like this.

Let me see the cover of the one you have, if I may, Minister. No, that's later on testimony from the next person. It should be the other stack.

**Hon. Bob Chiarelli:** A different stack of documents?

**Mr. Victor Fedeli:** One is for the next witness—

**The Chair (Mr. Shafiq Qaadri):** Your staff gave us both stacks, and so we distributed both stacks.

**Mr. Victor Fedeli:** Thank you. I appreciate that.



So you see the one that's the order in council? Do you have that document, Minister?

**Hon. Bob Chiarelli:** Yes, I'm looking at it now.

**Mr. Victor Fedeli:** Do you see your name on it?

**Hon. Bob Chiarelli:** Yes, I do.

**Mr. Victor Fedeli:** And what does it say beside your name?

**Hon. Bob Chiarelli:** "Vice-chair."

**Mr. Victor Fedeli:** Can you read the entire list of members who are the Management Board of Cabinet?

**Hon. Bob Chiarelli:** I'd prefer you read them.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Bob Chiarelli:** I'd prefer you read them.

**Mr. Victor Fedeli:** I'm asking you to read them, Minister.

**Hon. Bob Chiarelli:** No, I'd prefer you read them.

**Mr. Victor Fedeli:** Chair, it's a simple question to ask the minister to read a document.

**The Chair (Mr. Shafiq Qaadri):** And I believe he's entitled to say he prefers—

**Mr. Victor Fedeli:** That he doesn't want to answer.

**Hon. Bob Chiarelli:** I'll answer.

**The Chair (Mr. Shafiq Qaadri):** You have to ask him.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Bob Chiarelli:** No, I'd prefer you to read it.

**Mr. Victor Fedeli:** I've asked you to read the names of the Management Board of Cabinet. It's a simple request, Minister. It's a very simple request.

**Hon. Bob Chiarelli:** You know the answer.

**Mr. Victor Fedeli:** I'm asking you to read them for me.

**Hon. Bob Chiarelli:** You know the answer.

**Mr. Victor Fedeli:** Chair, I'm asking you to ask the witness to—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, he's here to answer questions, not read text—

**Mr. Victor Fedeli:** Here we go with a Liberal Chair and a Liberal witness. It's no wonder we can't get to the bottom of this scandal when a witness can't even answer a simple question. Chair, I'm asking you to ask him to answer a simple question and read the members.

**Mr. Bob Delaney:** You haven't asked him a question.

**Mr. Victor Fedeli:** I'm not talking to you. I'm talking to the Chair, and I've asked a simple question here.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, with respect, the Chair, Liberal or otherwise, is informing you of committee procedure—

**Mr. Victor Fedeli:** Well, there is no respect here, Chair, when the member doesn't even want to—are you that embarrassed of your own fellow caucus members' names that you can't answer a question.

**Mr. Bob Delaney:** Mr. Chair, on a point of privilege.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, on a point of privilege.

**Mr. Bob Delaney:** Mr. Hudak also refused to read that sort of thing—

**Mr. Victor Fedeli:** I've asked a question of this member.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, thank you.

Please continue.

**Mr. Victor Fedeli:** I've asked for an answer from—are you that embarrassed to read their names? Are you that embarrassed, Minister, to read your fellow members' names?

**Hon. Bob Chiarelli:** I'm not embarrassed to read those names—

**Mr. Victor Fedeli:** I understand if you're—I can appreciate that.

**Hon. Bob Chiarelli:** They're elements in a document—

**Mr. Victor Fedeli:** So will you answer this question: Were you the vice-chair of treasury board from November 9 until—when?

**Hon. Bob Chiarelli:** I guess till the last election—yes.

**Mr. Rob Leone:** "I guess till the last election."

1520

**Mr. Victor Fedeli:** It's going to be tough to get honest answers again.

When did the discussion of the Oakville gas plant cancellation first come to treasury board?

**Hon. Bob Chiarelli:** I don't know the first date. I really don't know that date; sorry. You can remind me.

**Mr. Victor Fedeli:** Do you remember any discussion at treasury board of the cancellation of gas plants?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** Okay. What was the nature of that discussion?

**Hon. Bob Chiarelli:** The nature of the discussion was at a high level, that we had made a commitment to cancel, and they were in the process of negotiating. They were negotiating mandates that were discussed with respect to the cancellation of both of the gas plants. There were, on occasion, report-backs to committee—and I can remember the debate at a high level. I didn't take notes. There were 30 or 40 items on every meeting agenda, so I can't give you detailed dates at this particular point.

**Mr. Victor Fedeli:** When was treasury board first made aware of the additional costs associated with the gas plant cancellations?

**Hon. Bob Chiarelli:** I'm assuming—I don't know the date, but I'm assuming it's somewhere around the time that the ministry received information from the Ontario Power Authority with an estimated cost. I think that date is somewhere around March 25, when I was briefed by my chief of staff on updated OPA numbers for Oakville—a range of \$33 million to \$136 million. Also, at the same time, I had received some information about the draft report of the Auditor General on Mississauga. So probably somewhere in advance of that, by a month or two, there probably was discussion at treasury board.

**Mr. Victor Fedeli:** So a month or two before March it would have been discussed at treasury board.

**Hon. Bob Chiarelli:** I would say probably.

**Mr. Victor Fedeli:** One or two months.

**Hon. Bob Chiarelli:** I don't know when we received that information. I only know the date that I was briefed on it.



**Mr. Victor Fedeli:** Now we're into January 2011.

We'll switch to Mississauga. When did treasury board first discuss the Mississauga cancellation?

**Hon. Bob Chiarelli:** I don't know that date.

**Mr. Victor Fedeli:** Would Mississauga have been discussed in treasury board?

**Hon. Bob Chiarelli:** Mississauga likely was discussed in treasury board. I have provided you, and tabled—so I guess we can both refresh our memories, because you might already know the answer. Cabinet Treasury Board Timeline is a document that I've tabled. September 24, 2011: As I mentioned, the Liberal Party issues a press release stating that the plant will be relocated.

"October 20, 2011: New cabinet meets, and a high-level discussion confirming the government's plan to move forward on the commitment to relocate the Mississauga plant.

"October 24, 2011: Minister Bentley writes a letter to the OPA requesting that they commence discussions on a priority basis with Greenfield South Power Corp.

"November 21, 2011: Cabinet minute walk-around, signed by Wynne, Takhar, Chan and Murray, approves a \$10-million settlement with Eastern Power." I think that's already in the record somewhere.

**Mr. Victor Fedeli:** Okay, thank you, Minister.

**Hon. Bob Chiarelli:** "November 24: The Minister of Energy provides cabinet"—

**Mr. Victor Fedeli:** Minister, I was referring to the first time, so I appreciate that.

**Hon. Bob Chiarelli:** May 17 is the first reference I have to treasury board here—May 17, 2012.

**Mr. Victor Fedeli:** In speaking on the MOU with TransCanada, you've said that it's a contract between the proponent and the OPA. The contract is \$40 million in sunk costs, and it goes on to discuss the details.

**Hon. Bob Chiarelli:** What are you reading from now?

**Mr. Victor Fedeli:** I'm just talking about your conversation in the Legislature about sunk costs and additional calculations.

When did you first learn that there were more than just the sunk costs for both Mississauga and Oakville?

**Hon. Bob Chiarelli:** Again, I just want to repeat what was in my opening remarks. On February 12, 2013, I received a foundational briefing on gas plants, and the document is here for you to look at it.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** But you didn't hear about Oakville or Mississauga before you became the Minister of Energy?

**Hon. Bob Chiarelli:** I'm talking about as minister. You referred to comments I made in the Legislature; I would not have made comments in the Legislature unless I had been Minister of Energy, so I assume the time frame you were referring to was my time frame as Minister of Energy.

**Mr. Victor Fedeli:** In the remaining seconds, then, I would only say that you talk about the fact that you haven't been reading the transcripts, but in announcing your regional energy plan process you say you'll be

relying on recommendations from this committee. So I'm hoping that as we go forward you will indeed be paying attention to the important work that this committee is doing. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. The Liberal Chair now passes the floor to the members of the NDP. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Mr. Minister, thank you for being here this afternoon. You've presented us with this briefing that you were given by the Ministry of Energy when you became the new minister.

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** Were you given any other briefings by the Ontario Power Authority about the cancellation costs of the Oakville plant before Colin Andersen gave his testimony here?

**Hon. Bob Chiarelli:** I don't recall any.

**Mr. Peter Tabuns:** None? Did you ever reach out to him and say, "Mr. Andersen, your board reports to me. Can you please come and fill me in on this?"

**Hon. Bob Chiarelli:** I was very cautious to keep my communications with Mr. Andersen and the OPA to a minimum because there were a lot of discussions about the influencing of the OPA by political staff and perhaps ministers. I kept as much distance as I could and I relied on the ministry.

If I wanted something done, I would work through the ministry and the ministry, for example, would have requested him to come to committee. That was initiated by me. As I said in my opening remarks, the information that I received with respect to the updates that Colin gave at that committee I did not see until an hour or two before committee because I did not want to come to this committee and have people say that I was influencing them or that I influenced them. So I kept my distance.

**Mr. Peter Tabuns:** So between the time that you were sworn in as minister and the time that Colin Andersen gave his testimony, you had no discussions with Colin Andersen?

**Hon. Bob Chiarelli:** No, that's not correct. We had—

**Mr. Peter Tabuns:** Okay, I want to be clear: You had no briefings from him and you asked him no questions on this?

**Hon. Bob Chiarelli:** Not on the power plants. I had multiple briefings and meetings on other issues.

**Mr. Peter Tabuns:** But you specifically avoided asking him any questions on this and he did not volunteer.

**Hon. Bob Chiarelli:** If there were any communications with the Ontario Power Authority, it was communicated from my office through to the deputy's office and through to the OPA.

**Mr. Peter Tabuns:** And then it would come back as well, I assume.

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** And so using that chain of communication, did the OPA give you an assessment of what was going on with the cost estimates prior to Colin Andersen's testimony?



**Hon. Bob Chiarelli:** Yes, and I've referred to that. I indicated that on March 25, the ministry—the deputy—had been provided with information from Colin Andersen and the OPA, and I was subsequently briefed by my chief of staff on updated OPA numbers for Oakville and also an update on what was in a draft report of the Auditor General with respect to Mississauga. On that March 25 briefing—staff would have received it sometime before that; not a long time before that—I was provided with the \$33-million to \$136-million range.

**Mr. Peter Tabuns:** Could you please table that briefing from your staff that you received?

**Hon. Bob Chiarelli:** Yes. I have tabled it already.

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**Mr. Peter Tabuns:** You have and it's been—

**Hon. Bob Chiarelli:** I've got a copy of it here.

**Mr. Peter Tabuns:** No, that's fine. If you can give it to the Clerk—

**Hon. Bob Chiarelli:** Okay.

**Mr. Peter Tabuns:** —she will circulate it, and then we'll come back to it.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Was that it?

**Hon. Bob Chiarelli:** That's it, yes.

**Mr. Peter Tabuns:** Okay. That one, the relocation of gas plants; it says February 2013. You just said March 25 to me.

**Hon. Bob Chiarelli:** No. The foundational briefing I received from the ministry was on February 13.

**Mr. Peter Tabuns:** And is that this?

**Hon. Bob Chiarelli:** No. There are two different documents. There's a relocation of gas plants briefing, in which they indicated the costs: \$40 million sunk costs for Oakville and a \$190-million total relocation cost for Mississauga. Then, subsequent to that, we received an update from Colin Andersen at the ministry and the ministry briefed my chief of staff and my chief of staff briefed me on March 25, and that updated report on the numbers indicated a \$33-million to \$136-million range.

I might add that that was approximately one month before Colin Andersen came to committee, and by the time he came to committee his estimate of \$33 million to \$136 million had changed again. So he brought a higher number to committee one month later. He also brought with him an expert opinion—

**Mr. Peter Tabuns:** Yes, I know. I've read that.

**Hon. Bob Chiarelli:** —which had a different number, and at that same 90-minute session, a different number was put on the table by a Conservative member, estimating what the cost was. So at the same meeting, the committee members were looking at four different numbers on the cost, which underlined something I had been saying every time I answered a question in the Legislature: We have to wait for the Auditor General to report on the numbers, because we still have yet another number to receive and that number will be the number from the Auditor General. We're talking about numbers here that are changing, and they're going to change one more time, I'm sure, when the auditor presents his report.

**Mr. Peter Tabuns:** I'm very sure, too.

On February 25, you said, in response to a question, "We asked the Ontario Power Authority to provide us with the cost of the relocation. They provided us with the \$230 million—the \$40 million for the relocation of Oakville." But clearly, you knew that it was going to be higher than \$40 million, that there were other costs involved. Even this document you've provided us with shows a variety of costs—\$210 million for gas turbines, yet-to-be-concluded costs on gas contract management and delivery—and yet, when you're in the House, \$40 million, no talk about other costs that were going to be coming down the pipe. Why?

**Hon. Bob Chiarelli:** I said on a regular basis that we would have to wait for the auditor's report. I mentioned in one of my scrums after question period that the cost could be higher. I mentioned in the Legislature that the cost could be higher, but it could be the same, because we didn't know. It was a moving target.

Particularly with respect to Oakville, it's really important—and I refer you to the actual deck—

**Mr. Peter Tabuns:** No, I—

**Hon. Bob Chiarelli:** —the briefing note. I refer you to page 5—sorry, page 10.

**Mr. Peter Tabuns:** Yes. That's the one I was just citing to you.

**Hon. Bob Chiarelli:** The briefing talks about costs. So I think you're on the right page, in terms of raising issues of costs, and it's referred to in this deck. The OPA was able to negotiate a lower contract cost with Trans-Canada Energy for the power produced at the new site. The NRR for the Lennox facility is \$15,200 per month, down from \$17,000 per month for the original Oakville location. So I don't think anybody calculated at that time—

**Mr. Peter Tabuns:** Mr. Minister, you don't actually have to read through this. When I would ask you questions in the House, I'd be told \$40 million, and there would not be reference to a variety of other costs.

**Hon. Bob Chiarelli:** Well, you were told more than \$40 million.

**Mr. Peter Tabuns:** Pardon?

**Hon. Bob Chiarelli:** You were told \$40 million—

**Mr. Peter Tabuns:** Forty million.

**Hon. Bob Chiarelli:** —and there were different questions that were asked on different days, and they were answered differently depending on the question. Number one, we knew—the deputy minister knew and I knew—on the date of this briefing note what the sunk costs were—

**Mr. Peter Tabuns:** Yes.

**Hon. Bob Chiarelli:** —the sunk costs. What we also knew on the Oakville calculation was that the contract itself—I brought the MOU on that with me, and I actually read a very lengthy paragraph from this into Hansard in answer to one of the questions in terms of how complex the calculation was to have taken that out—



**Mr. Peter Tabuns:** Minister, I'm going to come back to that. If you could set that aside for the moment.

When Ms. Wynne, the Premier, was here, she was asked about the numbers and who knew what when. She said, "I have ... had conversations with my Minister of Energy, and I know that he is in close contact with the OPA." Is that true or not? Were you in close contact?

**Hon. Bob Chiarelli:** Through the ministry, as I indicated earlier.

**Mr. Peter Tabuns:** So you were in pretty constant contact with them through your deputy minister.

**Hon. Bob Chiarelli:** Occasionally, on the gas plants—occasionally in touch with them through the ministry.

**Mr. Peter Tabuns:** Gee, based on what the Premier had to say, you were in close contact with the OPA.

**Hon. Bob Chiarelli:** I was in close contact with the Premier, and the information I was sharing with her was the information that I got from the ministry.

**Mr. Peter Tabuns:** It doesn't seem to be what she said, but I will set that aside for the moment.

Can you give us records of those interactions between you, your deputy minister and the OPA on matters related to the price or the cost that people in this province were at risk for?

**Hon. Bob Chiarelli:** We've tabled those documents—

**Mr. Peter Tabuns:** And that's it?

**Hon. Bob Chiarelli:** Well, really, as far as any information that I received as minister on the cost, having been appointed Minister of Energy, I received a briefing from—let's be fair, here. The time periods were very, very tight. I was appointed minister on February 11. So we had between February 11 and March 25 to move from sunk costs to the updated estimate. We're talking four or five weeks, here; that's the time frame we're talking about.

**Mr. Peter Tabuns:** When we asked you about the cost beyond the \$40 million in sunk costs, you answered the question with, "That contract identified sunk costs and also contemplated a wide range of other costs. That was there for the whole world to see in September 2012."

"The Auditor General, in his Mississauga report—it was very, very clear from that that these are very complex calculations..."

So which is it? Was the number there for everyone to see or was it too complex to calculate?

**Hon. Bob Chiarelli:** What you just read was intended to communicate that there were complex, difficult-to-establish numbers. That's what my answer was intended to communicate, and that is a fact. As a matter of fact, if anybody, particularly the two critics, would read the memorandum of understanding that was posted and try to calculate the cost—I defy you to calculate the cost accurately.

My understanding is that it went on well into a number of months, and they may still not have finalized the final calculations on the Oakville plant. The memorandum of understanding and the contract referred to formulas to calculate, and knowing that it would be different to

calculate, it went on to say that if there's a differential or they can't agree, they would go to arbitration on the calculations.

It's very, very difficult to say specifically and it's very difficult to be clear in answering questions, because it is complex.

**Mr. Peter Tabuns:** What did your ministry staff tell you that these extra costs were going to come in at? What was the range that you were told? Because clearly, you knew, we knew, that \$40 million was the beginning, not the end of these costs. What were you being told?

**Hon. Bob Chiarelli:** What we were being told was that the Auditor General on Mississauga used an approach to calculate the costs which was not an approach that the OPA used or would typically use. In other words, they looked at the long term; they looked at line losses, that type of thing. Some of those same types of calculations would apply to Oakville. We can only guess what the Auditor General is going to do with respect to Oakville because he's still working on it, and he hasn't reported. He will look at similar types of costs. It's after the OPA communicated the draft report numbers to the ministry from Mississauga that the ministry and others realized that using those calculations would probably change the Oakville calculation as well. Those calculations are still ongoing with the Auditor General.

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**Mr. Peter Tabuns:** So what were the internal calculations that you had? Your government signed a memorandum of agreement. There was \$40 million of sunk costs in it. There were all these gas management charges. You had paid \$210 million for turbines; you were going to get some sort of deal back on that. What was the number you were working with? You knew that \$40 million was the beginning, not the end.

**Hon. Bob Chiarelli:** I wasn't working with any number until March 25, when the OPA came in with an adjusted estimate of a range of \$33 million to \$136 million. Keep in mind the short time frames here, okay? From March 25 to the date Colin Andersen came to committee—he came to committee on April 30. From March 25 to April 30, the OPA changed its number from \$33 million to \$136 million to \$350 million plus or minus.

We're relying on the OPA to provide numbers to us. They have the expertise; they have the in-house knowledge. They're providing information to us, the best information they have. The best information they had with respect to—again, having seen the draft report on Mississauga, they upped the number from \$33 million to \$136 million.

Then between that date and April 30, when Colin Andersen came to committee with a new number—I saw Colin Andersen's new number for the first time an hour before committee. That's the first time I saw the new number that went to committee.

**Mr. Peter Tabuns:** Minister, did you ever speak with Chris Bentley about this issue before or after his resignation and your swearing-in?

**Hon. Bob Chiarelli:** Never.



**Mr. Peter Tabuns:** So you never asked him about the costs?

**Hon. Bob Chiarelli:** No.

**Mr. Peter Tabuns:** Is that customary, that you don't talk to your predecessor?

**Hon. Bob Chiarelli:** I would talk to my predecessor; there may have been discussions that took place in front of treasury board or at cabinet, but no, I don't talk to every one of my fellow ministers on every one of their files. Otherwise, we'd spend all of our time talking.

**Mr. Peter Tabuns:** No, I imagine that's true. But you came into a ministry that was dealing with a huge crisis—

**Hon. Bob Chiarelli:** I didn't think it was wise for me as a new minister to come in and have discussions with Minister Bentley, given the issues that were before this committee. I had advice, which I concurred with, that I should not be having conversations with Mr. Bentley.

**Mr. Peter Tabuns:** Who gave you that advice?

**Hon. Bob Chiarelli:** My staff.

**Mr. Peter Tabuns:** Is it your staff who are running the response to this crisis?

**Hon. Bob Chiarelli:** No. I—

**Mr. Peter Tabuns:** Who is?

**Hon. Bob Chiarelli:** Well, when my office makes a decision, such as coming to this committee, it's my decision.

**Mr. Peter Tabuns:** Is it your practice, when signing cabinet documents, to read them?

**Hon. Bob Chiarelli:** Most always.

**Mr. Peter Tabuns:** Do you ask about cost implications?

**Hon. Bob Chiarelli:** Occasionally.

**Mr. Peter Tabuns:** Minister, you're asked to sign off on things, and effectively you turn over a blank cheque?

**Hon. Bob Chiarelli:** I don't sign off on cabinet documents.

**Mr. Peter Tabuns:** Okay.

**Hon. Bob Chiarelli:** There are decisions that are made, and then there are minutes, which are recorded. The decision is represented in a minute. That minute is approved, and then it goes to Cabinet Office. I don't sign, and ministers don't sign, cabinet decisions.

**Mr. Peter Tabuns:** Well, actually, we've heard testimony about what's called a walk-around, where—

**Hon. Bob Chiarelli:** Well, a walk-around is a different issue. When I have a walk-around, I will read it. I want to know what it is.

**Mr. Peter Tabuns:** I would hope you would read it. Do you ask about the cost implications?

**Hon. Bob Chiarelli:** If it's appropriate, I ask about the cost implications.

**Mr. Peter Tabuns:** I guess if it's a non-monetary item, but for something like this, would you ask for cost implications—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:**—if someone was, say, cancelling a billion-dollar contract?

**Hon. Bob Chiarelli:** Well, I mean, that's a hypothetical situation—

**Mr. Peter Tabuns:** Unfortunately not.

**Hon. Bob Chiarelli:** You're talking about a billion dollars. A billion dollars was used before, and a billion dollars is used now. There's possibly a \$500-million error in the comment, and it's used very lightly.

**Mr. Peter Tabuns:** So do you ask about cost implications when you're presented with signing off on a document that may in fact risk several hundred million dollars?

**Hon. Bob Chiarelli:** I actually can't recall signing a walk-around for cabinet, but certainly—

**Mr. Peter Tabuns:** You'd think it's good practice to ask these questions.

**Hon. Bob Chiarelli:** Sorry?

**Mr. Peter Tabuns:** You'd think it's good practice to ask.

**Hon. Bob Chiarelli:** Depending on the circumstances. Depending on the circumstances.

**Mr. Peter Tabuns:** Given that there might be a lot of money at risk, you'd think it would be a good idea to ask.

**Hon. Bob Chiarelli:** If it's something that—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese.

**Mrs. Laura Albanese:** Did you want to finish the sentence? Please go ahead, if you just wanted to finish that.

**Hon. Bob Chiarelli:** There are a lot of issues that are before cabinet that are 98.9% finalized. Something has to be checked or whatever, and it's brought around and somebody says, "We verified this or that," and it's signed. Whoever is walking it around will let you know what happened to that particular item or part of the answer.

You don't go back, necessarily, and read the whole report that went to cabinet. It usually occurs reasonably soon after a cabinet meeting that has dealt with that issue. There's not a lot of separation in time. So it depends on the circumstances.

**Mrs. Laura Albanese:** I just thought it would be suitable for the minister to finish.

Thank you so much for being here this afternoon, Minister. I would like to start by asking you: When you were invited to testify before this committee today, was that the first invitation that you had received?

**Hon. Bob Chiarelli:** Yes.

**Mrs. Laura Albanese:** Okay. And you are not, obviously, the first member of the government to appear before this committee after a first invitation. We have a long list that includes Premier Wynne, former Premier McGuinty, Minister Duguid, and former Minister Bentley as well. What does that say about our government's approach to this file? Would you say that the government is being open and transparent?

**Hon. Bob Chiarelli:** I've said that in the Legislature on a number of occasions. I think you judge that record on its merits in terms of what the opposition was saying and what our government was saying.



I certainly respect the Premier for her transparency and her openness, which she has repeated in detail often in the Legislature. I think people believe her and trust her.

**Mrs. Laura Albanese:** I believe that the fact is, our government has taken several steps to be open and transparent as much as possible in regard to these two locations—

**Hon. Bob Chiarelli:** As minister, I'm happy that we initiated an expansion of the mandate of the committee to include finding better ways, or recommending better ways, to site energy infrastructure. I'm hoping that the committee will get to that and will put some substantive effort into it, including witnesses, moving forward.

Certainly, she opened up the documents to all ministries and the Premier's office, something that had not been requested. It was volunteered by her. She volunteered at the earliest possible time to come here as a witness, and she has.

As the new Minister of Energy, I've been as open and transparent as possible. I indicated in my opening remarks that I received information about new documents the evening that the Legislature came back, and I initiated tabling those documents before question period the very next day. In the spirit of openness, I asked the chair, Jim Hinds, to have himself and Colin Andersen come to Queen's Park that very same day. There was no way I could answer to the Legislature why that happened or how it happened, and as a minister with accountability, the only way I could communicate accountability was to have the people who gave that information to me, who conducted the searches, come and publicly answer those questions. I think that was extremely transparent to do.

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**Mrs. Laura Albanese:** Yes, I agree. It was, after all, a government motion that significantly expanded the scope of this committee and not only dealt with a matter of privilege but also brought in the issue on the relocation of the gas plants, and similarly, government members of this committee put forward a motion requesting documents government-wide for an expanded time frame, which unfortunately the opposition at the time voted down. Nevertheless, there have been numerous document production motions that have been passed in this committee with the support of government members.

So, given this openness, what do you think about the opposition allegations that we are involved in some sort of cover-up?

**Hon. Bob Chiarelli:** Well, you know, there's been a lot of comment—

*Interjection.*

**Mrs. Laura Albanese:** You'll get your turn. This is my time.

**Hon. Bob Chiarelli:** —and I provided a transcript of Colin Andersen's and Jim Hinds's answers in public—

**Mr. John Yakabuski:** We're wasting time in this committee asking questions like that, Chair. That's ridiculous. You've got 20 minutes; you should actually ask some real questions.

**Hon. Bob Chiarelli:** With respect, you know—

**Mr. John Yakabuski:** Bob, that's craziness.

**Hon. Bob Chiarelli:** With respect, I'm not interrupting you, so please don't interrupt me, Mr. Yakabuski.

So the answers that were given in open press availability were as follows: This one went to Colin Andersen, "At any point during these searches—we are talking about all of them, not just this one"—this is a question from the media—"did you feel that you were under a great deal of political pressure to either produce or not produce records?" Colin Andersen's answer is, "No."

To Jim Hinds: "So the opposition has accused the government today of a cover-up. Would you say that is an accurate assessment of what has happened here?" Jim Hinds: "I don't think cover-up is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us"—referring to the OPA.

Another question to Colin Andersen: "Did you have communication with the Liberal election team?" Colin Andersen's answer: "No."

Another question to Colin Andersen: "How often did you go talk to political staff and minister's staff and the ministry know you are coming in and you are given direction? Does it happen daily? Every week?" Again, that's a question from the media, I want to repeat. Colin Andersen's answer: "No. In our discussions, we are with the deputy's side of things and the bureaucrats that were dealing with it."

Again, when Colin Andersen was at committee, Colin Andersen said, "When all was said and done, it was our decision." Mr. Del Duca said, "The OPA was responsible for your own document search and had final signoff on what was provided to the Clerk. Would you agree?" Mr. Andersen said, "Yes," under oath.

**Mrs. Laura Albanese:** Thank you, Minister, for that presentation.

I want to ask you now about the decisions made to relocate these two plants. You were not the Minister of Energy at the time these decisions were made, and you were not involved in the files at the time, but yet you've said that you support these decisions. Why is that?

**Hon. Bob Chiarelli:** I support the decisions partly in acknowledgement that we have a deficiency in the system in terms of siting strategic energy infrastructure. That's number one. Number two, very strong cases were made from elected officials and community leaders from Oakville and Mississauga, and they supported the cancellation and the relocation of the power plants. At the same time—and I often look across and I look at Mr. Bailey who represents the Sarnia-Lambton area, and he's smiling and he takes credit in Sarnia for having created jobs and bringing the facility from Oakville, and I understand there is significant host approval in Lennox for the other plant. So there are four communities that are happy with the outcome.

The unhappy part of the outcome, given that the three parties recommended relocating and promised to re-



locate, is the cost involved. None of us knew the cost, and when we got into it, the cost was higher than anticipated, and now we're paying a financial price and a political price for doing that. But it was something that we all promised to do. We implemented promises that the three parties made moving into the election.

**Mrs. Laura Albanese:** Speaking about that, the decision to relocate the plants has been described as political. That was mentioned even earlier. When asked about that characterization, Premier Wynne explained that energy experts were responsible for siting the plants and that the role of the elected officials was to listen to the communities and make sure that local voices were being heard. She said, "There was advice that was given, there was siting expertise, but the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants."

You would agree with that characterization—

**Hon. Bob Chiarelli:** I would agree with that characterization.

I would say that I'm in the process of taking some very significant steps to remedy that situation. There are two energy areas that involve siting. One of them is renewables—wind turbines, solar and so forth—and the other is larger infrastructure; for example, gas plants. We've taken initiatives on both fronts. With respect to the large infrastructure such as gas plants, I issued a direction to the OPA and the IESO to report back to me by August 1 with a consultation plan and a process to create regional energy plans and to include processes that would engage municipalities in a way that this type of situation would not occur again.

The other type of siting has to do with the renewables, and within the next week or so, I'll be making an announcement with respect to feed-in tariff and also with respect to the impact on municipalities, and I believe it will be well received.

**Mrs. Laura Albanese:** Minister, going back to these plants: If it wasn't for politicians, would you agree that these two plants would have been built on those sites even though all three parties opposed them and even though the communities didn't want them?

**Hon. Bob Chiarelli:** Absolutely. That's a fact.

**Mrs. Laura Albanese:** Okay. As a minister, I assume that you pay close attention to the policy positions of your counterparts in the opposition.

**Hon. Bob Chiarelli:** Yes.

**Mrs. Laura Albanese:** So I guess you would know where they stood on the issue of the Oakville plant, of the Mississauga plant.

**Hon. Bob Chiarelli:** I wish I had the time to repeat all the comments our government House leader has made in the Legislature in terms of quotes and other evidence. Certainly, both opposition parties promised to cancel the gas plants and neither did they have cost estimates.

**Mrs. Laura Albanese:** Speaking about quotes, one that I have here is from Ted Chudleigh, the PC member from Halton, who was very frank about his opposition to

the plant. I have a quote from June 1, 2010, from Mr. Chudleigh, who stated, "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them."

On October 7, 2010, we have MPP Peter Tabuns, who told Inside Halton, "I don't agree with the Oakville power plant."

Then, on December 2, 2010, MPP Michael Prue stated, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed."

So in your opinion, there's no doubt that both opposition parties opposed the Oakville plant?

**Hon. Bob Chiarelli:** I think there's a lot of evidence supporting that, and I don't think it's deniable, quite frankly.

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**Mrs. Laura Albanese:** And in regard to the Mississauga plant, I'm sure you're well aware that during the election, both opposition parties made campaign commitments to cancel the plant, if elected, and that's certainly what the mayor of Mississauga has told us in this committee. She testified and said, "The impression that was certainly given beyond a doubt.... I think all parties would have cancelled it," meaning the Mississauga plant.

**Hon. Bob Chiarelli:** She went further. She told the opposition that they should get on with the business of government.

**Mrs. Laura Albanese:** Okay. So there's no doubt that both opposition parties opposed that plant. So in that case—

*Interjections.*

**Hon. Bob Chiarelli:** You guys are no Hazel. I listen to Hazel.

**Mrs. Laura Albanese:** In that case, what would you make of the PC and the NDP constantly attacking the government in the Legislature and in the media on these two power plant relocations? The government fulfilled the commitments that all three parties made, as you mentioned earlier, the commitments that were made to the people of Oakville and Mississauga. Do you believe that in some way they should take responsibility for those very public commitments that were made, instead of pointing fingers?

**Hon. Bob Chiarelli:** I think the opposition is doing what a lot of oppositions do, and that is, they believe there's no accountability in opposition and their job is to hold the government accountable, so they're working very, very hard to hold the government accountable. We're not going to let the public forget that there has to be accountability also on the part of the opposition.

**Mrs. Laura Albanese:** In regard to the Oakville costs, I would like to ask you a few questions about those relocation costs. Colin Andersen testified to the committee that the government relied on OPA numbers. He said that this is true: "We did provide them with the numbers. That is what you would expect."

Do you agree with that characterization, that the government would have used what was provided and approved by the OPA, and only those numbers?



**Hon. Bob Chiarelli:** The government relies on information it gets from all of its agencies. We receive information from Metrolinx and Infrastructure Ontario. They're complex, detailed, technical. Occasionally, we will ask for outside advice. But we accept their advice.

The opposition, in fact, accepted the information that was received from Colin Andersen when he appeared on April 30 before committee. He came in with a higher price, and they were happy to accept his higher price. I think they suggested it might be higher, but to them it was good news that he came in with a higher price, because it certainly is an issue for us, all of us in the Legislature, that the costs were higher than anticipated when we all promised to cancel and relocate the plants.

**Mrs. Laura Albanese:** Now, following the release of the auditor's report on Mississauga, the opposition asked for an update on the Oakville numbers. In response to this request, you sent this committee a letter on April 22, asking us to invite Colin Andersen to provide the OPA's most updated estimate, as you were mentioning. Why did you take that step? Why did you write to us and ask the committee to invite Colin Andersen?

**Hon. Bob Chiarelli:** I was concerned, and I have been from day one, about how much uncertainty there was with respect to calculating the costs of the relocation. It was a very, very difficult issue.

Having received on March 25 a briefing which included a new range of costs from OPA, from \$33 million to \$136 million, and having seen information as to what was in the draft Auditor General's estimate, it was apparent that costs were changing and information was changing on an ongoing basis, so I thought it was important for the committee to hear the latest and to hear the information directly from Colin Andersen. There's always this perception from the opposition that we're hiding information and not sharing it with them, that we've got information that we're getting from OPA and not sharing.

My philosophy has been, my practice has been and my experience is that when we got information that was unexpected and a surprise—when I was told early in February that there were more documents, I immediately released them, and I had the OPA come and be publicly accountable for it. Given the fact that we had these new estimates which had come in on this, I thought it was important for the OPA to come in and be publicly accountable, under oath, for their numbers, and that's what happened. I think I did the honourable thing and I think I did the ethical thing in both of those instances.

**Mrs. Laura Albanese:** Thank you, Minister. Chair—

**The Chair (Mr. Shafiq Qaadri):** It's 10 seconds.

**Mr. Bob Delaney:** Okay, in 10 seconds, Chair, I've just tabled a document showing Mr. Fedeli that declining to read documents—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Mr. Delaney. Now we have one of those documents, too.

**Mr. Bob Delaney:** Good.

**Mr. Victor Fedeli:** Minister, on April 16, 2013, when speaking of the MOU with TransCanada, you said the following: "It's the contract between the proponent and the OPA and the provincial government. It states in the contract itself: \$40 million are the sunk costs. It states in the contract itself that there are other calculations that are being made. Those calculations relate to reduce power site and to the provision of certain equipment."

That's an interesting statement to me because it's the first acknowledgement on your part, on the part of the government, that there were indeed additional costs. When did you first learn of these other calculations?

**Hon. Bob Chiarelli:** I learned of calculations at some point—obviously after I was appointed Minister of Energy. It would have been within five or six weeks of that particular date. It was when I was provided with a copy of the memorandum of understanding relating to the Oakville settlement.

In fact, in answer to one of the critics' questions—I believe it was Mr. Fedeli—I actually read one of the calculations. I don't think there was anybody in Ontario who could understand what I was saying, reading a calculation that was very, very difficult. So—

**Mr. Victor Fedeli:** So there are indeed additional calculations, then?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** There are other costs other than the sunk cost of \$40 million? I'm asking you a question. Are there—

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** So there are sunk costs other than \$40 million.

**Hon. Bob Chiarelli:** No. There are sunk costs, and there are other costs.

**Mr. Victor Fedeli:** Yes, so there are other costs in addition to the \$40 million of sunk costs.

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** When did you first become aware of that?

**Hon. Bob Chiarelli:** When I became aware of the actual document?

**Mr. Victor Fedeli:** No, the fact that there's more than \$40 million to cancel Oakville.

**Hon. Bob Chiarelli:** Well, sometime within that time period—sometime a month or two before answering that question, within a very short time frame. I don't remember the exact date, and I don't think it's relevant.

**Mr. Victor Fedeli:** Well, I think it's relevant, considering that you and others in your party continued to say the total cost—

**Hon. Bob Chiarelli:** The implication is—

**Mr. Victor Fedeli:** —is \$40 million.

**Hon. Bob Chiarelli:** I'm sorry, the implication is that I was misleading the Legislature, and I was misleading you. That's categorically wrong.

**Mr. Victor Fedeli:** So what are the total costs to cancel Oakville?

**Hon. Bob Chiarelli:** The total costs to cancel Oakville are exactly what I've been saying in the Legislature



for several months in answer to your questions. There are sunk costs, and then there are other calculations which are reflected in the agreement that was made public on December 17, 2012, which referred to calculations that, if they were not agreed to—

**Mr. Victor Fedeli:** The word—

**Hon. Bob Chiarelli:** —it would go to arbitration.

**Mr. Victor Fedeli:** —“sunk costs” is kind of a new one for everybody. This is reasonably new, the expression “sunk costs.” Why would your predecessor, then, say, “the bottom line cost”? In fact, I’ll read you his exact quote. “The cost—the bottom line cost—of relocating ... Mississauga ... is \$180 million.” “We know the cost of Oakville is \$40 million.” And: “The only accurate cost to the taxpayer of this relocation is \$40 million.”

Premier McGuinty: “The total cost of the relocation is \$40 million.” Premier McGuinty: “The total cost of that relocation was \$190 million.” And: “On the matter of the cost, Speaker, it’s \$40 million.”

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Why would these people continue to say a total cost of \$40 million and \$190 million and now you’re saying it’s a sunk cost of \$40 million? Is that a subtle change?

**Hon. Bob Chiarelli:** Well, I think, first of all, we should look at the information that was flowing from the OPA to the Ministry of Energy and from the Ministry of Energy to the Premier’s office or to—

**Mr. Victor Fedeli:** Let me jump to that, then. Let me just jump to that exact theme, because the flow of that information, even after everybody has been saying that the Mississauga plant cost \$190 million—let me tell you what Michael Lyle said, a vice-president and legal counsel at OPA. He testified: “They”—the government—“would have been aware that there were costs that had been paid more than the \$190.” This is in reference to your government continuing to say the plant cost only \$190 million. But he swore under oath the OPA had already paid back in July \$245 million, long, long, long before—months before—you and your government and others in your government continued to say that the total cost of Mississauga was \$190 million. How do you square that?

**Hon. Bob Chiarelli:** I square that—you asked me, first of all, about Minister Bentley and about the Premier saying what the costs were. I was starting to answer the question when you started putting additional facts in, and I’m not sure you’re still asking the same question or not. Are you still asking the same question?

**Mr. Victor Fedeli:** Well, I’m asking about the OPA. You’re saying that they were dealing with figures from the OPA, but the OPA swore here—and let me read you what else they said. They swore that everybody in the government knew that that \$245 million had already been paid, that the cash was already out.

**Hon. Bob Chiarelli:** Which plant are you referring to?

**Mr. Victor Fedeli:** Mississauga. Mr. Lyle also had this to say: “There were ministry representatives at the table ... as well as Infrastructure Ontario representatives.”

You were the minister of that ministry at the time. So there were representatives from Infrastructure Ontario, where you were the minister, representatives from the Ministry of Energy, where you’re now the minister, and somehow you expect us to believe that you were unaware of those additional costs?

**Hon. Bob Chiarelli:** The only information, to my knowledge, that the government had with respect to costs was information that flowed from the Ontario Power Authority to either the Ministry of Energy—

**Mr. Victor Fedeli:** Which was \$245 million.

**Hon. Bob Chiarelli:** No, I’m sorry. The information that was provided with respect to costs was \$190 million in sunk costs and \$40 million in sunk costs. Those were the numbers that were provided at a point in time.

**Mr. Victor Fedeli:** But this is July. This is a long time ago now. This is getting close to a year ago that they told us that \$245 million had already been spent, and that everybody knew. Colin Andersen: \$40 million is only “a portion of the costs.” He’s talking about Oakville in that case.

**Hon. Bob Chiarelli:** When did he say that?

**Mr. Victor Fedeli:** “As signatories”—

**Hon. Bob Chiarelli:** When did he say that?

**Mr. Victor Fedeli:** Under oath here. “As signatories to the MOU ... they were” well “aware” that there were additional costs, from “early estimates fairly early on ... that there were significant costs....”

**Hon. Bob Chiarelli:** Everybody was aware—

**Mr. Victor Fedeli:** Yes, that’s what he said: everybody.

**Hon. Bob Chiarelli:** Can I finish the sentence?

**Mr. Victor Fedeli:** He said “everybody” too.

**Hon. Bob Chiarelli:** Everybody was aware as a result of the memorandum of understanding that was put on the website September 24 and December 17. Everybody was aware that there were sunk costs and other calculations. The other calculations weren’t all costs. Some of them were savings.

**Mr. Victor Fedeli:** So you knew there were other costs.

**Hon. Bob Chiarelli:** Some of them were savings.

**Mr. Victor Fedeli:** Are you saying that you knew of other costs when the MOU was signed?

**Hon. Bob Chiarelli:** And of the savings. But they hadn’t been calculated, so he didn’t know whether it was a net plus or a net negative.

**Mr. Victor Fedeli:** But are you suggesting, then, that Minister Bentley and former Premier McGuinty didn’t know that then? Because they were sticking with the original numbers.

**Hon. Bob Chiarelli:** Yes, but they weren’t making those statements on December 12. They were not making those statements—the memorandum of understanding was actually signed on September 24. Okay?

**Mr. Victor Fedeli:** So are you saying that nobody has given the numbers of \$40 million total cost or \$190 million total cost since that MOU was signed?



**Hon. Bob Chiarelli:** Well, I want to go back to my own briefings. My own briefings—

**Mr. Victor Fedeli:** Yes, but your briefings—with all due respect, Minister, I looked at that briefing. That's a pretty cozy briefing that they've given you. It's pretty light on details, I might add, considering what we know should have been in there. Minister, they did not put it in there. That's a very superficial briefing that either was asked for or delivered to you, but I've got to tell you, there's no meat on those bones.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Bob Chiarelli:** This briefing was provided in February and it was based on a memorandum of understanding that was signed in September and registered at the full contract in December. Okay?

**Mr. Victor Fedeli:** Yes.

**Hon. Bob Chiarelli:** So at that point in time, that memorandum of understanding had not made the calculations of pluses and minuses beyond sunk costs. So I think it's important that we keep in mind those time frames—

**Mr. Victor Fedeli:** Jenkins, Killeavy, Lyle, Butler and Colin Andersen himself said everybody knew—everybody knew. Other people knew.

**Hon. Bob Chiarelli:** He was referring to the MOU, which stated that there were additional costs and savings, but they—

**Mr. Victor Fedeli:** You were the Minister of Infrastructure Ontario when Mr. Lyle said that there were ministry representatives who were at the table, as well as Infrastructure Ontario representatives, of which you were the minister. Are you implying that you did not know then?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you. Minister, you've been pushing pretty strongly that people were given this limited information in this briefing, but in front of you is this document, Project Vapour Update, from January 2012. Do you have it? Thank you. Page 6, "Estimating a Settlement Value"—so January 2012, corporate and electricity finance division: "TransCanada Enterprises has been seeking recovery of what it states are its out-of-pocket expenses (\$37 million); cost of turbines (\$210 million); estimated financial value" of the contract, somewhere between \$503 million and \$385 million.

Minister, as of January 2012, your government knew we were talking about a lot more than \$40 million at risk here. When we ask you questions in the House and we're told \$40 million, which was not a credible figure at any point for total figures, and we see that you've been briefed in the hundreds of millions of dollars of costs, then we ask: What on earth is going on? When you and Premiers stand up and say that it's \$40 million, and we know now that you have these documents that were before you in January 2012 as well as in February 2013 showing much higher numbers, we want to know what you're doing when you're talking to the House and giving a figure that doesn't represent the risk or cost to the people of Ontario.

**Hon. Bob Chiarelli:** I don't know what this document is, for starters. I don't know who created it. You're telling me it's the OPA? Is it the OPA who created this?

**Mr. Peter Tabuns:** No. Corporate and electricity finance division, Ministry of Finance. It came to cabinet.

**Hon. Bob Chiarelli:** Okay. So it doesn't say anything in here about lower gas prices, which ended up being part of the memorandum of understanding—a very, very significant component that was included in the memorandum of understanding that was finalized almost a year after this. It took a year between this and the time the document was—the memorandum of understanding was actually finalized and put on the OPA website on December 17. So there was a lot that happened between January and December, including some pretty tough negotiating that went on, including negotiating a lower gas price. And even in the contract itself, they still had not finally calculated the set-offs between lower gas savings and other costs. That might still be ongoing; I don't know. It might be going to arbitration; I don't know. We have to await the Auditor General's report on those issues.

**Mr. Peter Tabuns:** Well, you're well aware that there may have been lower gas costs. I look forward to seeing those numbers—

**Hon. Bob Chiarelli:** It's not referred to in here.

**Mr. Peter Tabuns:** Sir, this also is a situation in which the province took over responsibility for the gas distribution and management, and that's about a half a billion. That's a lot of money. That is an awful lot of money. Your government was using the \$40-million figure for months when it knew that the risks and categories or buckets of costs were much bigger. You weren't being straight with us in the House. It's as simple as that.

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On that same document—

**Hon. Bob Chiarelli:** Are you talking about me, personally?

**Mr. Peter Tabuns:** I'm talking about your government.

I want you to go to page 3 of that same document in front of you, the background as the Ministry of Finance, Oakville Generating Station, second-last bullet point. I'll read it out.

TransCanada Enterprises "was already in force majeure under the OPA contract by October 2010, as it had not obtained the necessary municipal permits, and the contract would have allowed the OPA to terminate on its own by the end of 2011, without penalty."

You may not have followed the testimony in this committee, but we have. Consistently, when it was a question of looking out for the public interest and making sure that ratepayers were protected or making sure that something was kept under wraps and that we were facing far greater risks with a quick termination because, frankly, there was an election coming, your government, your party, consistently chose your party's interests ahead of the people's interests.

You've just talked about who was committed to stopping this plant. Well, I believe it was your govern-



ment that sited these plants. Was it not? Was it the Liberal government of Ontario that was in charge when the Mississauga and Oakville plants were sited?

**Hon. Bob Chiarelli:** I think the Premier has been very clear and I have been very clear that the whole issue and the rules and the process around siting energy infrastructure were not as good as they could be. Yes, the government was responsible because we're ultimately accountable. As indicated by one of the other committee members, there were technical people who made that decision and there were political people who cancelled that decision, but—

**Mr. Peter Tabuns:** There were politicians—ministers—who issued directives to site plants in an area. That's the way it works. You get to issue a directive. There was an RFP, and private power companies came forward with sites that worked for them. Your party created this mess. This mess created huge political problems for your party. Your party used public money to bail itself out.

Do you have a different interpretation of that story?

**Hon. Bob Chiarelli:** I'm not going to comment on that sequence of events and the background—

**Mr. Peter Tabuns:** You have been all along.

**Hon. Bob Chiarelli:** What I will do is acknowledge, as the Premier has, that we could do a better job siting. I took the opportunity earlier in my responses to indicate the steps I'm taking as the minister to improve the situation of siting. Two initiatives that are taken—one for renewables, which will be announced very, very soon, and another one, which I indicated two weeks ago that I issued a direction to OPA and IESO to come back by August 1 with the process for consultations and with the process for creating regional energy plans for large strategic infrastructure. There will be a new regimen for the siting of energy infrastructure, and there will be better planning. We have not been planning, across the province, regional infrastructure. If we had regional infrastructure, then the issue of non-willing hosts would not be an issue.

**Mr. Peter Tabuns:** Minister, I don't actually need expansion on that. In the course of these hearings, your government, the Liberal government, has tried to blame the Ontario Power Authority for orders that it gave the Ontario Power Authority, and then acted as if you came in to save the day when in fact you created the problem in the first place.

How do you expect to be credible before us when you don't acknowledge that in fact you created this problem right at the beginning, right at the get-go?

**Hon. Bob Chiarelli:** Well, all three parties could not have made the promise to relocate—

**Mr. Peter Tabuns:** Just a second—

**Hon. Bob Chiarelli:** —and those gas plants would be in place right now.

**Mr. Peter Tabuns:** Which party put forward these gas plants in these locations? Because I have to tell you, Howard Hampton advised you before I was ever on the scene that your drive for privatized power was going to

cause huge problems. When I saw your plans for Trans-Canada in Oakville, I raised it in the House. I pointed out to the Premier, you're allowing a gas plant with less than 500 metres separation from the nearest house. I think you could have figured it out.

**Hon. Bob Chiarelli:** I think I'm correct when I say that the site in Mississauga was zoned for a gas plant already. It would accommodate that.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Bob Chiarelli:** And then there was a change. After there were a lot of objections raised, my understanding is, there were subsequent bylaws and other regulations that were passed—

**Mr. Peter Tabuns:** You overrode them all.

**Hon. Bob Chiarelli:** —in order to prevent it.

**Mr. Peter Tabuns:** All overridden.

**Hon. Bob Chiarelli:** The reality is that that site was actually zoned for it—

**Mr. Peter Tabuns:** So that was a good site, and you cancelled it? That was a good site—

**Hon. Bob Chiarelli:** We cancelled it on your advice and the other party's advice.

**Mr. Peter Tabuns:** —and you decided, on the basis of your electoral needs, what you were going to do.

**Interjection:** We've got some more advice.

**Mr. Peter Tabuns:** Well, we were giving you advice. We said, "Stop relying so much on gas, and stop privatizing the power system. We're going to get in trouble." And that's what happened. You may have noticed; you got into a lot of trouble. Unfortunately, everyone in this province is paying for the trouble you created.

**Hon. Bob Chiarelli:** For the opposition, these two gas plants were seat-gainer programs. You promised to cancel them in order to gain seats.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Ms. Soo Wong.

**Ms. Soo Wong:** I have a couple of questions for you, Minister. As you're quite familiar with the commercially sensitive negotiations, I have questions related to that piece. What would happen if one party got access to sensitive and confidential information about another party? How would it affect the outcome of negotiations, Minister?

**Hon. Bob Chiarelli:** I think what happened in this particular case—obviously, we were not in a good bargaining position as a government. We had contracts to build two plants; all three parties had promised to cancel them. So when it came time to negotiating, we basically had to ask for amendments or break the contracts and write new contracts. To provide inside information on our calculations and what our strategy was to the opposition would be like playing a game of poker and showing your cards to the other side. It was irresponsible.

**Ms. Soo Wong:** As you know, in May 2012, the estimates committee passed a motion made by Mr. Leone asking for all correspondence within a specific timeline in the Ministry of Energy and the OPA related to the Oakville and Mississauga gas plants. At the time of the motion, there were complex and sensitive negotiations



ongoing with both companies. In your opinion, what would it have meant if the OPA's and the province's negotiating position was prejudiced because a company had access to confidential and privileged information?

**Hon. Bob Chiarelli:** It was really compromising the taxpayers of the province of Ontario. It was taking away the negotiating, bargaining strength from the government and giving it to the proponents, the builders of the gas plant. To the extent that we're involved in negotiating this type of contract, with hundreds of millions of dollars at stake, by showing the other party your hand—in other words, showing them your negotiating position, how far you might be prepared to go etc.—you're undermining your case. As a government, we were at the table, and we were being undermined by members of the Legislature in terms of our bargaining position. They cost us tens of millions of dollars, if not hundreds of millions of dollars.

**Ms. Soo Wong:** Okay. Minister, with regard to the sensitive documents you talked about earlier, what do you think about Minister Bentley's decision to wait to release these sensitive documents until the deals were finalized? Can you share with us your opinion on that?

**Hon. Bob Chiarelli:** Well, I guess I can share my opinion based on my experience. I was regional chair of Ottawa-Carleton and mayor of Ottawa for a period of nine years. We were involved in very large infrastructure projects, including an LRT project in the city of Ottawa. There were provisions in those contracts with respect to confidentiality, items that were commercially sensitive. That is part of doing business.

In addition, governments and Legislatures recognize that that's part of doing business. That's why governments and Legislatures and municipalities, in their access-to-information and right-to-privacy legislation, indicate that you can withhold providing that information if it is commercially sensitive, if it involves legal discussions and negotiations. I had to deal with that as a mayor, and every government has to deal with that on an ongoing basis. So in terms of the principles of dealing with the issue, I can understand why Mr. Bentley was saying and doing what he was doing.

**Ms. Soo Wong:** You know that this committee is currently reviewing the opposition allegations of contempt regarding the document production. Given the fact that Minister Bentley was clearly acting in the best interests of Ontarians, what sort of advice would you give to this committee as we deliberate on the very serious allegations?

**Hon. Bob Chiarelli:** The advice I would give is, given the serious nature of the contempt charge—this committee sits as a judge and a jury. A judge and a jury are supposed to come into the room and look at the issue objectively, and I think any objective analysis would say that it's a normal practice and principle that you withhold that information if there are sensitive discussions, if there are legal implications going on. It's enshrined in legislation to do that, although this committee, as I understand it, overruled the legislation that provided that protection. In my opinion, they did it at our collective peril, because

we ended up having to settle for more money. It cost us money by reason of that.

**Ms. Soo Wong:** Earlier this month, Minister, you announced that the OPA and the IESO would be reporting back with their recommendation on developing—

*Interjections.*

**Hon. Bob Chiarelli:** Chair, I can't hear the question because of the overriding conversation.

**The Chair (Mr. Shafiq Qaadri):** Thank you, gentlemen. If you might let the witness and the questioner proceed.

**Ms. Soo Wong:** Minister, earlier this month, you announced that the OPA and the IESO would be reporting back with their recommendation on developing a new planning process on siting energy infrastructure moving forward. How will our committee work help inform this review?

**Hon. Bob Chiarelli:** In my direction to the OPA and the IESO, in asking them to provide an action plan by August 1 on creating regional energy plans and how we'll consult on them—that they take into account any recommendations that come forward from this committee. So there's still plenty of time, I assume, to deal with the issue. My strong recommendation is that this committee, at an appropriate time, have expert witnesses come in on planning regional energy, on siting projects, and perhaps have some people from other jurisdictions come in, so that we'll have the basis to move forward with objective and good planning in the future.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Delaney, two minutes—three minutes.

**Mr. Bob Delaney:** Thank you, Chair. I believe we're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Fair enough.

**Mr. Bob Delaney:** In between the two witnesses, however, may we request a brief recess for the general comfort of the committee members?

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We'll recess for about five or 10 minutes. I thank you, Ms. Wong, for your questioning, and thank you, Minister Chiarelli, for your presence today. You're respectfully dismissed.

So a five- or 10-minute recess, gentlemen and ladies.

*The committee recessed from 1634 to 1647.*

MS. HALYNA PERUN

**The Chair (Mr. Shafiq Qaadri):** Colleagues, the Standing Committee on Justice Policy is now back in session. Our next witness is Ms. Halyna Perun, legal director, legal services branch of the Ministries of Energy and Infrastructure. I invite you to please be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Halyna Perun:** So help me God.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Perun. We'll begin with the five-minute opening remarks, beginning now.

**Ms. Halyna Perun:** Thank you, Mr. Chair. As you've mentioned already, my name is Halyna Perun. I am the legal director of the legal services branch of the Ministry of Energy and the Ministry of Infrastructure. I am a lawyer and member of the Law Society of Upper Canada. I have practised law for 27 years, and have been with the provincial government as a lawyer for almost this entire time.

I came to the energy-infrastructure legal services branch and to this position of legal director on September 13, 2010.

Prior to this position, from April 2007, I held the position of deputy director at the legal services branch of the Ministry of Health and Long-Term Care, where I was part of the management legal team that provided leadership to a staff of 60. In this capacity, I provided legal support in a number of portfolios, including public hospitals, drug reform, mental health, privacy, e-health and regulated health professions.

From 1987 to April 2007, I was counsel at that branch and was instrumental in the development of seminal health legislation, including the Health Care Consent Act, 1996, and the Personal Health Information Protection Act, 2004, which garnered all-party support.

As legal director at energy and infrastructure, I am a member of two senior management tables, and my staff of 22, which includes 11 lawyers, support staff and students, provides legal support on a range of legal issues to both the Ministries of Energy and Infrastructure.

I wanted to take the opportunity to place myself and my lawyers into a broader context for you. We are employees of the Ministry of the Attorney General and are part of the MAG legal services division. As MAG counsel, we are "seconded" into client ministries, and some offices are centralized, such as the office of the constitutional law branch and crown law office-civil, which you've heard here called CLOC. All counsel in my branch report through me and the portfolio director to the assistant deputy attorney general, legal services division. Across the division, the branches function as a single law firm.

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I'm here at the invitation of the committee. As a lawyer, I am obliged to protect my client's privileged information. I have been authorized to respond to any questions put to me by the committee that might reveal the contents of privileged communication. Further, I may discuss the documents previously sent to the committee for the purposes of testifying before you and without waiving the privilege which otherwise attaches to these documents and the discussions relating to them.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Perun, for your introductory comments. I now invite the NDP to begin, and feel free, gentlemen, to turn off the electronic devices there.

**Mr. Peter Tabuns:** Thank you, Chair, and thank you, Ms. Perun, for being here with us this afternoon. When

did you first become involved with the cancellations in Mississauga and first involved with the cancellations in Oakville? Let's go with Mississauga first.

**Ms. Halyna Perun:** So, first of all, with Mississauga, my first involvement was shortly after the election.

**Mr. Peter Tabuns:** So that would be October 2011?

**Ms. Halyna Perun:** That's right.

**Mr. Peter Tabuns:** Okay.

**Ms. Halyna Perun:** And with respect to Oakville, shortly after I arrived to the branch, there was an announcement in respect of the cancellation of the plant. So I was involved around—in terms of knowing about it, shortly after I arrived to the branch.

**Mr. Peter Tabuns:** And you arrived, again?

**Ms. Halyna Perun:** September 13, 2010.

**Mr. Peter Tabuns:** Okay. Do you have any recollection of when you first came across referral to Project Vapour or Project Vapour Lock?

**Ms. Halyna Perun:** With respect to Project Vapour, my first recollection is a meeting or a class that I was invited to—a meeting—at the end of 2011—the very end—

**Mr. Peter Tabuns:** Sorry. When in 2011?

**Ms. Halyna Perun:** December, I believe, 2011. With respect to Vapour Lock, I honestly don't recall exactly when that started, but that would be also around some time in the fall of 2011.

**Mr. Peter Tabuns:** Okay. Did you ever receive materials from the Premier's office with the words "vapour"?

**Ms. Halyna Perun:** Not to my recollection.

**Mr. Peter Tabuns:** Not at all? Or Vapour Lock?

**Ms. Halyna Perun:** From the—

**Mr. Peter Tabuns:** From the Premier's office.

**Ms. Halyna Perun:** From the Premier's office, no.

**Mr. Peter Tabuns:** In the course of the work that you did—let's start with the Oakville plant—who do you believe was making the final decisions about the cancellation, the minister's office or the Premier's office?

**Ms. Halyna Perun:** I don't have a belief in that regard.

**Mr. Peter Tabuns:** Not one way or the other?

**Ms. Halyna Perun:** Not one way or the other.

**Mr. Peter Tabuns:** Okay. There should be a package of documents in front of you. It looks like this. Do you have that?

**Ms. Halyna Perun:** Oh, yes.

**Mr. Peter Tabuns:** And if you go through, there's one that has number 3 on it and it's an email from you to Malliha Wilson. Do you have that before you?

**Ms. Halyna Perun:** Yes, I do.

**Mr. Peter Tabuns:** Okay. If you go to the bottom of the page, third paragraph up, Deputy Lindsay is talking about a "negotiating mandate." He talks about the need for a "firm cap" on, I assume, what was going to be paid out. Was one ever put in place, to your knowledge?

**Ms. Halyna Perun:** I'm not aware.

**Mr. Peter Tabuns:** Pardon?

**Ms. Halyna Perun:** I'm not aware of a firm cap.



**Mr. Peter Tabuns:** No cap was ever put on, to your knowledge?

**Ms. Halyna Perun:** In the context of this particular email in this time frame: not that I'm aware of at this time.

**Mr. Peter Tabuns:** Was there a firm cap put on at a later date that you're aware of?

**Ms. Halyna Perun:** Not that I'm aware of.

**Mr. Peter Tabuns:** Okay. I'm going to go to the next document, document 4, and it's a series of emails.

**Ms. Halyna Perun:** Right here. Got it.

**Mr. Peter Tabuns:** Do you see the "4" there at the top of the page? On the second page, it's an email from Tom McKinlay to Malliha Wilson with a c.c. to you. In this email, you're referenced where you can see Tom's name—the bottom third of the page, two paragraphs up. It's written, "Significantly, however, Halyna indicated that it might be difficult for MEI to develop a more detailed rationale than is already set out in the letter." This is essentially providing a legal defence around the government's actions on the Mississauga plant—the Liberal action on the Mississauga plant. "As Craig noted in his email earlier today, the 'record' that MEI has pulled together is a bit thin at this point and does not include the kind of primary material that would be necessary to support a more detailed description of the community opposition to the Mississauga power plant."

It seems he's saying this because justification would be helpful to defend the government from claims of interference. Can you explain what was going on in this discussion?

**Ms. Halyna Perun:** At this particular time, we were gathering information to put before the minister so that he could make a decision based on the public record that there was opposition to the plant at this time.

**Mr. Peter Tabuns:** Are you suggesting that there wasn't much for rationale for them there?

**Ms. Halyna Perun:** I'm not suggesting that. In fact, I think, ultimately a record was pulled together and was put before the minister, and it was as robust as it could have been. It was as robust as we could make it.

**Mr. Peter Tabuns:** Does that mean that it was a very robust defence, or not?

**Ms. Halyna Perun:** It was not a defence at this time. It was simply a collection of materials that showed that there was opposition to the plant. That's what he needed to have before him so that he could make a decision, based on the public interest, that the plant should not proceed—should not continue.

**Mr. Peter Tabuns:** Did you ever brief the minister on legal risks in the different options for action on Oakville?

**Ms. Halyna Perun:** Yes. Oh. In terms—in Oakville, no.

**Mr. Peter Tabuns:** And you were never asked?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** That seems odd to me. Were others being asked?

**Ms. Halyna Perun:** There was legal advice provided. Prior to my arrival, there was certainly advice that was

provided, and it is in the materials that the committee has.

**Mr. Peter Tabuns:** Were you involved in drafting the October 7 termination letter that was sent to TransCanada?

**Ms. Halyna Perun:** That the Ontario Power Authority sent?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** Were you involved in any discussions about the sending of that letter?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** When the new minister was sworn in, who provided a briefing on the gas plants?

**Ms. Halyna Perun:** I actually cannot recollect who actually would have provided the briefing, who in fact led the briefing or—I don't recollect, to be honest.

**Mr. Peter Tabuns:** Were you part of that briefing?

**Ms. Halyna Perun:** I may have been. I actually don't recollect.

**Mr. Peter Tabuns:** Okay. Were you familiar with the opinion given by the OPA in the fall of 2010 that it would be possible to exit Oakville and minimize costs by doing it slowly rather than quickly?

**Ms. Halyna Perun:** What time frame would that be?

**Mr. Peter Tabuns:** In October 2010—September or October 2010.

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**Ms. Halyna Perun:** Then that was before my time, probably.

**Mr. Peter Tabuns:** So you weren't familiar with any analysis at that time?

**Ms. Halyna Perun:** As I mentioned, when I arrived, that was September 13, 2010. The material that would have been in the briefing notes and all of that, that would have happened before my time at the ministry.

**Mr. Peter Tabuns:** Were you aware, in the spring of 2011, of the multiple offers made by the Ontario Power Authority to TransCanada to settle?

**Ms. Halyna Perun:** In the spring of 2011?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** I was aware that there were efforts under way—in negotiations, yes.

**Mr. Peter Tabuns:** Were you drawn into those negotiations?

**Ms. Halyna Perun:** Somewhat.

**Mr. Peter Tabuns:** Can you detail what your experience was when you say "somewhat"?

**Ms. Halyna Perun:** There were several conference calls, or a number of calls I suppose, in April 2011, as I recall, where it was indicated that TransCanada and the Ontario Power Authority were having difficulties, or the negotiations were breaking down. So I guess at that point, in some respects, the ministry then became engaged in the discussions around what could be the next steps or what should happen next.

**Mr. Peter Tabuns:** And who were the participants in these calls?



**Ms. Halyna Perun:** I don't recall all of the people that would have been on the calls, but there was—

**Mr. Peter Tabuns:** No, but as best as you can recollect.

**Ms. Halyna Perun:** Particularly, in some instances, there was the Premier's office—

**Mr. Peter Tabuns:** And do you know who from the Premier's office?

**Ms. Halyna Perun:** Sean Mullin.

**Mr. Peter Tabuns:** Sean Mullin from the Premier's office?

**Ms. Halyna Perun:** Mm-hmm.

**Mr. Peter Tabuns:** I'm sorry; if you could pull that microphone closer to you.

**Ms. Halyna Perun:** I'm sorry. Okay. Is that better?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** Okay.

**Mr. Peter Tabuns:** That is better, actually.

**Ms. Halyna Perun:** Okay. It's the way I'm sitting, as well, so then maybe this way it will help.

I was involved in a few conversations with Sean Mullin, Craig MacLennan, the deputy, Lindsay—it was Deputy Lindsay at the time—and the OPA on calls.

**Mr. Peter Tabuns:** We understand the instructions to make these settlement offers by the OPA, those instructions were coming from the ministry, telling them to go forward with them. Is that your recollection?

**Ms. Halyna Perun:** I don't have that recollection.

**Mr. Peter Tabuns:** What is your recollection?

**Ms. Halyna Perun:** I recollect that there were discussions, but I actually don't recollect the ministry saying that there must be a certain approach.

**Mr. Peter Tabuns:** Our understanding from reading the documents is that the OPA felt they were instructed to make those offers; certainly they were instructed to make a second offer. You don't have a recollection of those instructions being given?

**Ms. Halyna Perun:** No, I don't.

**Mr. Peter Tabuns:** Okay. In the spring of 2011, there was a slide deck produced that's in the package that you have before you that rated the different options on Oakville and gave the opinion that arbitration was the riskiest in terms of cost, but the great advantage was that it was not public. I'll just go through—it's a bit further in.

**Ms. Halyna Perun:** So the three options: "No arbitration," "Arbitration on damages," and "Arbitration on all issues."

**Mr. Peter Tabuns:** That's right. These came from the legal services branch, Ministry of Energy.

**Ms. Halyna Perun:** Right.

**Mr. Peter Tabuns:** Were you involved in their preparation?

**Ms. Halyna Perun:** I was involved, yes.

**Mr. Peter Tabuns:** Okay. So—

**Ms. Halyna Perun:** Actually, there are a number of decks, and I'm just wondering what that—you don't happen to know what this was attached to, do you? Okay.

**Mr. Peter Tabuns:** Unfortunately I don't.

**Ms. Halyna Perun:** Okay.

**Mr. Peter Tabuns:** When I've gone through, I've seen multiple decks as well.

**Ms. Halyna Perun:** Yes, okay. Because I don't know if this was—

**Mr. Peter Tabuns:** As far as I can tell, this is the last one.

**Ms. Halyna Perun:**—or whether it was the final, or anything like that. Okay. That's fine.

**Mr. Peter Tabuns:** So the first option was no arbitration. The advantages were that it "could change the current tenor of negotiations between the OPA and TransCanada" and that "the court proceeding will be protracted." Can you tell me the advantages there? Why was it useful to stretch out the court hearings?

**Ms. Halyna Perun:** Ultimately if the proceeding is protracted, there is, as is typical in litigation—it all takes a lot of time. It could take a few years and there wouldn't be any settlement or any final award of damages until the end, and it could be a few years down the line. That is one significant advantage, I guess, if you're looking at it that way, to litigation.

**Mr. Peter Tabuns:** It would probably have meant that the OPA would have a stronger hand in any negotiations with TransCanada, is that—

**Ms. Halyna Perun:** I don't know that. This is written from the point of view of the ministry, I think—this particular deck.

**Mr. Peter Tabuns:** Excuse me. I'm just noting that there may be a motion called, but it's been deferred. I thought we were about to be hauled out of here.

Disadvantages: You note, "In litigation, full evidentiary disclosure will be required, including all documents and an examination for discovery of a representative of the crown."

Can you expand on why that was a disadvantage?

**Ms. Halyna Perun:** So in litigation, ultimately everything is public, and in terms of if there was any involvement of any representative of the crown in this matter, that would possibly come to the public domain—come out into the public.

**Mr. Peter Tabuns:** And what would be the disadvantage in that?

**Ms. Halyna Perun:** That would be seen as a disadvantage to the government depending on who the representative of the crown is here that is being referred to.

**Mr. Peter Tabuns:** So the fact that the government might be called on the stand was seen as a disadvantage.

**Ms. Halyna Perun:** So some person could be called—that's right.

**Mr. Peter Tabuns:** Possibly the Premier.

**Ms. Halyna Perun:** Possibly the Premier.

**Mr. Peter Tabuns:** The next option is arbitration on damages. The advantage is: "Province may not need to participate in arbitration of limited scope." So it would just be the Ontario Power Authority. Is that correct?



**Ms. Halyna Perun:** That's right. The arbitration would be between the Ontario Power Authority and the proponent, TransCanada.

**Mr. Peter Tabuns:** And the process would be short and could be confidential.

**Ms. Halyna Perun:** That's right.

**Mr. Peter Tabuns:** And so why was confidentiality a plus here?

**Ms. Halyna Perun:** It would be kept away from the public domain.

**Mr. Peter Tabuns:** Okay.

Now, in disadvantages: "Creates highest financial exposure for the province and the OPA." Why? Because in many lines of questioning we've had here we've been told that going to court is the riskiest, and what your legal branch is saying here is that this arbitration is the riskiest for the people of Ontario.

**Ms. Halyna Perun:** It is because once you go into arbitration there is no, in a sense, control. It's the arbitrator who decides ultimately. Even in litigation, I suppose there's a way to come to a settlement during the litigation, and I'm not sure that that's exactly the same way that it plays out in an arbitration.

**Mr. Peter Tabuns:** So in fact, the arbitration was riskier than going to court, apparently what's said here. This is the highest risk of exposure for the province and the OPA.

**Ms. Halyna Perun:** That's what the disadvantage that's set out here is: that it would be the highest financial exposure for the province and the OPA.

**Mr. Peter Tabuns:** So if the government had chosen litigation, it would have had lower risk than this course that it adopted.

**Ms. Halyna Perun:** Ultimately, it's kind of hard to conclude one way or the other. I realize that this is noted as a disadvantage on this particular deck but this is one of many thought processes that we had in the course of what was happening here at this time, and it's certainly a flag that we had here, but who knows how, really, the litigation would have turned out, as well.

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**Mr. Peter Tabuns:** As you're probably aware, with the arbitration, the government gave up all its defences—the defence that the project was in trouble, the defence that the Oakville municipal government was going to hold it up and that would have put it in a position of force majeure. In fact, speedy resolution was opening it up to greater risk, was it not?

**Ms. Halyna Perun:** The arbitration provided a definitive framework around the process, ultimately.

**Mr. Peter Tabuns:** And that meant that the province had fewer tools at its disposal to protect itself.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair, and good afternoon, Ms. Perun. Thanks for coming.

I'd like to start by asking you about the motion that was passed in estimates in May 2012 for all correspondence from the Minister of Energy, the Ministry of Energy

and the Ontario Power Authority related to the Mississauga and Oakville gas plants and within a specific date range. At the time this request was made, were negotiations ongoing with TransCanada Energy and Eastern Power?

**Ms. Halyna Perun:** Yes.

**Mr. Bob Delaney:** Would it be accurate to characterize these negotiations as being commercially sensitive?

**Ms. Halyna Perun:** Yes.

**Mr. Bob Delaney:** In your view, how significant do you think the risks would have been to the negotiations and the outcome of them if commercially sensitive details were made public before the deals were finalized?

**Ms. Halyna Perun:** It's always best to keep the negotiations, if there are negotiations going on, confidential so that you have the most advantage in negotiations when the other side does not know your hand, in a sense, and all the information that you have, that you are negotiating with.

**Mr. Bob Delaney:** And if the reverse is true, if commercially sensitive information is divulged, what are the attendant risks to the government?

**Ms. Halyna Perun:** That could undermine the negotiations.

**Mr. Bob Delaney:** Okay. Perhaps you could quantify this kind of risk for us, what it would mean for the taxpayers if the Ontario Power Authority and the province's negotiating position had been prejudiced because the companies with whom they were negotiating had had access to confidential and privileged information. Would we be talking about tens or hundreds of millions of dollars?

**Ms. Halyna Perun:** I can't speculate, actually. I don't really know how it could have turned out, but certainly there was a concern at the time to ensure that the negotiations continue in a way that was most confidential.

**Mr. Bob Delaney:** Okay, Let's try it a little differently. When the Auditor General was asked the same question, Mr. McCarter responded and said, "It's like in poker. You don't show the people around the table your cards." Would you agree with that?

**Ms. Halyna Perun:** Yes, I would.

**Mr. Bob Delaney:** Okay.

**Ms. Halyna Perun:** A number of witnesses have articulated the same sentiment here.

**Mr. Bob Delaney:** To talk about the document search itself: In terms of the scope of the request, in your experience, have you ever seen a request of this magnitude from a committee?

**Ms. Halyna Perun:** In my experience, no.

**Mr. Bob Delaney:** We know that more than 56,000 responsive records were ultimately produced in response to that request. How does the size of that response compare to other responses you've seen, whether it be in the context of a freedom-of-information request or otherwise?

**Ms. Halyna Perun:** Certainly, compared to a freedom-of-information request, it was unprecedented. I



think, generally, this type of document production endeavour in the ministry was unprecedented.

**Mr. Bob Delaney:** To use your word, “unprecedented,” what type of challenges would this type of undertaking present for the Ontario public service and for the Ontario Power Authority? Could you perhaps speak to the resources that would go into responding to such a request?

**Ms. Halyna Perun:** I think, as Deputy Imbrogno mentioned when he was here, that in terms of, I would say, the second search that was done at energy, it essentially brought the ministry to a standstill. It was a very challenging time.

**Mr. Bob Delaney:** Did you have to learn new skills, acquire new search tools?

**Ms. Halyna Perun:** We certainly learned better skills in terms of searching our records. It was simply very difficult to pull together the documents quickly. That is certain. In the second search, I believe Deputy Imbrogno also mentioned that there was specific IT support that was brought in to help out with the search.

**Mr. Bob Delaney:** Okay. On September 24, 2012, thousands of documents were provided to the committee in response to the motion. In his letter to the Clerk accompanying these documents, then-Minister Chris Bentley stated, “I’ve been advised by ministry staff that the documents attached to the letter comprise all documents responsive to the committee’s request, regardless of privilege or confidentiality.” At that time, did you believe that all responsive records had in fact been tabled?

**Ms. Halyna Perun:** Do I believe that?

**Mr. Bob Delaney:** Yes.

**Ms. Halyna Perun:** It was not my obligation to believe. It was the minister who made that statement. I think all best efforts were made to produce the documents that were responsive to comply with the motion of the committee.

**Mr. Bob Delaney:** Okay. So, although, to use your words, the best efforts had been made, additional documents were tabled by the ministry on October 12, 2012, last year. Deputy Imbrogno wrote to the Clerk and said, “No responsive information or documents were deliberately withheld from the September 24 package.” We’ve heard allegations that more documents were turned over because of a “cover-up,” but in the letter, the deputy says that the ministry’s search for documents was—and I’m going to quote again—“conducted in good faith with every intention to comply with the committee’s motion.” In the scope of your work, would you agree with that statement?

**Ms. Halyna Perun:** I would certainly agree with that statement.

**Mr. Bob Delaney:** Okay, thanks.

To talk, then, briefly about the document search within the Ontario Power Authority, who was responsible for what the Ontario Power Authority identified and tabled with the committee?

**Ms. Halyna Perun:** Within the Ontario Power Authority? I wouldn’t know that.

**Mr. Bob Delaney:** Okay. Are you aware of suggestions that the ministry interfered with the document search at the Ontario Power Authority?

**Ms. Halyna Perun:** I am aware of that.

**Mr. Bob Delaney:** Okay. In particular, there has been some scrutiny over an Ontario Power Authority memo that alleged that Jesse Kulendran, who was then a ministry employee, had directed Ontario Power Authority staff to withhold documents. Is that familiar to you?

**Ms. Halyna Perun:** That’s familiar to me.

**Mr. Bob Delaney:** Okay. When Ms. Kulendran appeared before this committee a few weeks ago, she testified—and again, I’m going to use her words:

“I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents.

“The conversation on August 22 was about sharing observations that had been made through the minister’s office’s review of the documents, but it was not to provide any direction.”

Would you agree with Ms. Kulendran’s statement that she was sent over to the OPA not to tell them to exclude documents, nor did she have the authority to provide them with that direction?

**Ms. Halyna Perun:** I would agree with that, but that particular meeting happened at the deputy minister’s office.

**Mr. Bob Delaney:** Okay. Thank you. When the secretary of cabinet testified before this committee, we were told that an internal investigation took place regarding these allegations that had been made against Ms. Kulendran. I understand that you were interviewed as part of that investigation. We have received meeting notes that were taken during the interview. The notes taken by legal counsel state, “Jesse never told Kristin Jenkins to take anything out. HP believes her,” and then later on, “HP does not think Jesse is that type of person,” suggesting to be directing anyone to remove documents. So, just to confirm, HP is you?

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**Ms. Halyna Perun:** I assume so.

**Mr. Bob Delaney:** Okay. So when you were asked during this internal investigation, you confirmed that you believed Ms. Kulendran’s version of the events, correct?

**Ms. Halyna Perun:** I was asked whether I believe her, and my answer was yes.

**Mr. Bob Delaney:** Okay. Thank you. When he testified before the committee, we asked Deputy Imbrogno about these allegations, and he told us, “I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse has” said.

When we asked Colin Andersen about it, he agreed that the OPA was responsible for its own document search and had the final sign-off on what was provided to the Clerk.



So my question to you: In your observation, was it ultimately up to the Ontario Power Authority to determine what records were responsive and what they provided to the committee?

**Ms. Halyna Perun:** They had their own separate obligation to the committee, and yes, they would have made their own decision.

**Mr. Bob Delaney:** Thank you. In his letter to the Clerk on October 12, 2012, Colin Andersen, CEO of the Ontario Power Authority, stated, "It was always our intention to provide all responsive records and to respect the ruling of the Speaker." To the best of your knowledge, has the Ontario Power Authority acted in good faith in response to the document production motion?

**Ms. Halyna Perun:** I wouldn't have any reason not to think that they acted in good faith.

**Mr. Bob Delaney:** Thinking back on that whole chapter, would it be fair to call it a bit of a learning process?

**Ms. Halyna Perun:** I'm not sure. I guess you could call it that. Those wouldn't be my words, I guess.

**Mr. Bob Delaney:** How would you characterize it, then?

**Ms. Halyna Perun:** People basically did the best they could, and perhaps certain—I guess you could call it—everyone learned certainly from the work, from this experience—definitely. We possibly would do things a bit differently or more efficiently or whatever next time. But at the moment, I think people just basically did the best they could and acted with no malice, no wrong—no intention to do harm or anything like that.

**Mr. Bob Delaney:** Would the sheer volume of documents requested and the short time frame have given rise to any of the oversights and omissions?

**Ms. Halyna Perun:** Sorry. Can you repeat that?

**Mr. Bob Delaney:** Would the sheer volume of documents requested and the short time frame have given rise to any of the omissions or oversights in the document production?

**Ms. Halyna Perun:** It was just a lot. I would say yes, there was just simply a lot of documents that needed to be produced, and people did the best they could. Certainly, things were missed. It wasn't intentional.

**Mr. Bob Delaney:** I'd like to talk a little bit about the Oakville relocation. The first question will be about the decision to renegotiate with TransCanada to find an alternative to the Oakville plant. From the documents we've seen and the testimony we've heard so far, it seems to be clear that the best path forward for both the Ontario Power Authority and the government was to renegotiate an alternative site with TransCanada Energy rather than to rip up the original contract, and if the government had simply walked away from the contract, what we've heard so far suggests that there was a very significant risk of litigation with the potential result being extensive damages awarded against the province. Could you expand on some of those risks?

**Ms. Halyna Perun:** So if there were to be a litigation, it would be because the OPA—first of all, the contract

was between the Ontario Power Authority and TransCanada, so in terms of repudiating the contract, in terms of walking away from it, TransCanada would have been in a position to sue for breach of contract because there was no right to terminate in this particular instance. They could have very well brought the province into the lawsuit as well for the tort of inducing a breach of contract.

That's how it could have played out. We can only speculate what the court would conclude at the end of the day, but it certainly would have been a significant litigation.

**Mr. Bob Delaney:** Okay. In that vein, John Kelly from the Attorney General's office testified here a short time ago, to use his words, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

**Ms. Halyna Perun:** I would agree with him, since he is our litigator. In terms of an opinion that I would have on litigation, I should just say at the outset and clarify that we would be turning to people like John to provide us with the legal advice on litigation—its risks and its outcomes. That is the role that I have in my branch. We do not actually litigate at the branch but we rely on crown law office-civil, which is John and others in his shop.

**Mr. Bob Delaney:** Just to clarify, then, based on what you've said before, if it had come down to litigation between the government and TransCanada Energy, do you feel the province was likely looking at a fairly protracted, expensive and difficult litigation?

**Ms. Halyna Perun:** I would say that that certainly could very well be the case.

**Mr. Bob Delaney:** To ask you—how am I doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** Four minutes—less than.

**Mr. Bob Delaney:** Thank you. To ask you more specifically about negotiating versus tearing up a contract, when Deputy Lindsay was here before the committee not too long ago, he said, and I'll use his words, "If you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure."

He then moved on to say, "If you simply throw this into a court proceeding, what happens is you end up paying whatever costs without getting any electrons. So is there a better way to resolve this? TransCanada is a reputable company and our electricity system needs good suppliers out there, so maintaining good relationships with suppliers was part of the consideration. Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do."

As a lawyer, is this an accurate representation of the approach the government took at the time to avoid litigation?

**Ms. Halyna Perun:** There are a number of considerations when it comes to deciding what path to take, and I



think the way Deputy Lindsay articulated it is certainly—you know, those are the kinds of things that go into deciding what path to take. All of these options are put forward to the decision-maker and then a path is chosen. Certainly, litigation is a tough road, so other opportunities such as arbitration or mediation are considered as well.

**Mr. Bob Delaney:** Thank you, Chair. I think I'll pause here and pick it up on my next round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Thank you, Ms. Perun, for being here.

In the first two document dumps, the 56,000 documents, your name appears over 8,000 times. Is it fair to say that you would have intimate knowledge of this file?

**Ms. Halyna Perun:** Which file are we—

**Mr. Victor Fedeli:** The gas cancellation file.

**Ms. Halyna Perun:** A number of documents, yes, have my name on them. It's fair to say that I was either copied or the author or a recipient of a number of emails. A number of the documents pertain to the legal branch.

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**Mr. Victor Fedeli:** If you look at our documents that we've handed out—do you see them there?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. Go to the second page, PC doc 2. The third last paragraph that begins "Deputy"—this is authored by you on October 12, 2011. "Deputy Lindsay spoke of a 'negotiating mandate.' SOC wanted folks to begin working on material to take to cabinet to scope out a mandate. The materials would detail the sunk costs and lost profits." So is it safe for me to assume, Ms. Perun, that from day 1—it looks like you would have just heard of Mississauga at that particular time—you would have understood there were more than just sunk costs right from this early point?

**Ms. Halyna Perun:** The email certainly sets out that the consideration in the materials that were expected to be produced would articulate sunk costs and lost profits.

**Mr. Victor Fedeli:** Okay. This is a note that you authored. This is yours.

**Ms. Halyna Perun:** This is, yeah.

**Mr. Victor Fedeli:** So you were aware that there would be sunk costs and other costs?

**Ms. Halyna Perun:** I'm not sure whether those are my words or whether those were Deputy Lindsay's or the secretary of cabinet's at this point, to be honest.

**Mr. Victor Fedeli:** But you authored this email, this lengthy email, that went to everybody out there.

**Ms. Halyna Perun:** Yeah. Just as a reporting email as to what happened at this particular meeting.

**Mr. Victor Fedeli:** At that time you reported that there will be sunk costs and other costs, and this was taken to cabinet. This is being—

**Ms. Halyna Perun:** This was for—the idea at the time was that there should an options deck created to be brought forward to cabinet.

**Mr. Victor Fedeli:** Okay. Back in October 2012, then, the deck would have been created that talked about sunk costs as well as other costs.

**Ms. Halyna Perun:** Right.

**Mr. Victor Fedeli:** Okay. Down at the bottom, it talks about a firm cap. I think I heard Mr. Tabuns ask you about that. Was there ever a firm cap? Did anybody have an upside limit? Did you ever hear of it?

**Ms. Halyna Perun:** In terms of the Mississauga plant, I don't recall.

**Mr. Victor Fedeli:** You don't recall.

**Ms. Halyna Perun:** There could have been, but I actually don't recall. Sorry.

**Mr. Victor Fedeli:** Okay. Others have been here testifying that the Ministry of Energy had no legal authority to direct the OPA to cancel those contracts. Is that your understanding as well?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** So can I ask you a simple question? Why do you think the OPA, then, cancelled these contracts if the Ministry of Energy had no legal authority to tell them to do so?

**Ms. Halyna Perun:** I can't speculate on that.

**Mr. Victor Fedeli:** Okay. If you go to document 4—it's after the slide—

**Ms. Halyna Perun:** Sorry—

**Mr. Victor Fedeli:** That's okay. It's after the slide deck. This is an email, now, a November 8 email from Tom McKinlay to Malliha Wilson—

**Ms. Halyna Perun:** MAL-uh-ha.

**Mr. Victor Fedeli:** Malliha, I'm sorry; Malliha Wilson. You are copied, as well as many others. The second paragraph begins with: "I suggested that these kinds of details would be useful in rebutting any inference that the minister (or the government) has been motivated by any improper or unlawful purpose in this case." Isn't it clear that there was political interference on this file, Ms. Perun?

**Ms. Halyna Perun:** The government made a decision to relocate the plant.

**Mr. Victor Fedeli:** Okay. In document 5—this is also an email, November 11, 2011, from you to Ms. Wilson.

**Ms. Halyna Perun:** Right.

**Mr. Victor Fedeli:** Down at the bottom, Craig MacLennan is sending a note—it's all in this email chain:

"As you know the minister is looking for paper comfort from his colleagues on exposure.

"Can you please tell me the options available for us on what that paper could be, i.e. cabinet minute, treasury board order, letter from Dwight, etc. and the pros and cons associated with each."

Can you describe your interactions with Craig MacLennan for me, please? What was he looking for here?

**Ms. Halyna Perun:** First of all, it's an email that he's sending Carolyn Calwell and David Lindsay. Actually, I don't really—

**Mr. Victor Fedeli:** He's looking for a comfort letter for his minister.

**Ms. Halyna Perun:** I think he's looking for options in the earlier part as to what there should be: a cabinet minute, a treasury board minute or a letter—

**Mr. Victor Fedeli:** To provide the minister the paper comfort.

**Ms. Halyna Perun:** I don't think we saw this as legal advice, to be quite honest.

**Mr. Victor Fedeli:** That's fair. So, let me then ask you—I'll repeat—what would your interactions be with Craig MacLennan, not just necessarily on this one document, but over time?

**Ms. Halyna Perun:** We would have interactions with him from time to time on files—

**Mr. Victor Fedeli:** From when to when?

**Ms. Halyna Perun:** Not very often, but he would either email or phone on matters.

**Mr. Victor Fedeli:** Can you recall starting when or ending when?

**Ms. Halyna Perun:** Since I arrived and until he left, I certainly know that I had not many but a number of conversations or emails from Craig.

**Mr. Victor Fedeli:** So you would repeat that from the time you arrived, which was the fall of 2010—

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:**—until he left—I don't want to put words in your mouth.

**Ms. Halyna Perun:** Yes. I actually don't recall when he left, but there would have been occasionally, not a lot—

**Mr. Victor Fedeli:** Yes, here and there.

**Ms. Halyna Perun:** He didn't email me particularly.

**Mr. Victor Fedeli:** Right until the time he left?

**Ms. Halyna Perun:** I don't know. I mean, I don't know exactly when he left, so I can't really tell you that.

**Mr. Victor Fedeli:** Okay. A couple of pages in, you basically—

**Ms. Halyna Perun:** Sorry, which—

**Mr. Victor Fedeli:** The same document, on page 3 of 3. Basically, you're asking, "What Craig was asking for—Deputy Lindsay wanted general not legal advice."

**Ms. Halyna Perun:** Oh. Well, there it is. Okay.

**Mr. Victor Fedeli:** That was pretty much what you just testified to, so I appreciate that consistency.

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Go to the next page, document 6. Again, this is from you. You generated a lot of email out of those 8,000, I have to say.

**Ms. Halyna Perun:** We were responsive.

**Mr. Victor Fedeli:** I can imagine that they were.

Again, on November 11, there's a line in here: "Minister Bentley would like this type of sentence included in the draft...."

"I will be engaging my colleagues in any dialogue with you on the most appropriate way to allocate compensation between the OPA and the Crown."

Do you have any idea what he's referring to there: "allocate compensation between the OPA and the Crown"?

**Ms. Halyna Perun:** I think this is the whole issue, yes.

**Mr. Victor Fedeli:** Is this the first time that we saw ratepayer versus taxpayer?

**Ms. Halyna Perun:** I think that was a signal. There are other drafts in the materials that actually have the words—

**Mr. Victor Fedeli:** Ratepayer versus taxpayer, yes. We were coming to those.

Do you know why? Why the difference between ratepayer versus taxpayer?

**Ms. Halyna Perun:** Again, for the taxpayer, the monies come out of the CRF, and for the ratepayer, it's we consumers who pay for this.

**Mr. Victor Fedeli:** So it's safe to say that the money that comes from the taxpayer, out of the CRF, is public knowledge, and we may never know the breakdown for the money that would come from the ratepayer. Is that a fair assumption to say to you?

**Ms. Halyna Perun:** That is one way of looking at it, I guess. That's certainly—

**Mr. Victor Fedeli:** But is it correct to look at it that way, as well?

**Ms. Halyna Perun:** Well, I don't really—you know, ultimately, the ratepayer amounts are seen on our bills, so—

**Mr. Victor Fedeli:** My hydro bill isn't broken down by—the scandal is added in there. I think it's safe to say that it's a way to bury the cost.

1740

Back as far as November 11, they were already talking, in your own words, about ratepayer versus taxpayer, where they were going to split these costs. Is that correct?

**Ms. Halyna Perun:** I wouldn't characterize it that way.

**Mr. Victor Fedeli:** Split the costs?

**Ms. Halyna Perun:** There was a concern in terms of how the compensation would be apportioned.

**Mr. Victor Fedeli:** I like it characterized like that even better, to be honest: that there were concerns.

Document 7; then we're going to get out of Mississauga after this one. There was a Keele Valley side deal.

**Ms. Halyna Perun:** I'm sorry, document 7—

**Mr. Victor Fedeli:** You don't really need the document in front of you. I think you're pretty well versed with the file. The Keele Valley side deal: I won't refer to the document. How many of the 10 side deals the Auditor General outlined were you aware of or involved in? The side deals.

**Ms. Halyna Perun:** I should really explain my involvement and where I fit into all of this.

**Mr. Victor Fedeli:** I only have 20 minutes with you today. I have about 10 minutes left—

**Ms. Halyna Perun:** Okay, but if I may just for a second, because I guess it's important in terms of the—at that particular time, first of all, the main negotiation continued between the OPA and Greenfield in November 2011. In terms of the Keele Valley litigations, that was sort of the bailiwick, I suppose, of the Ministry of Fi-



nance and the OEFC. So that was something that those entities would have been involved in. In terms of the settling of the whole Greenfield matter, we had external counsel on the file. They would have been more involved than I.

**Mr. Victor Fedeli:** So you're telling me, on the Mississauga round, where they talked about sunk costs and other costs, that you were aware that there were other costs.

We're going to start on Oakville now. Were you aware that there are other costs as well as the \$40 million in sunk costs?

**Ms. Halyna Perun:** "Yes" is the short answer.

**Mr. Victor Fedeli:** Okay. How long ago would you have known that there are more than \$40 million in sunk costs that will be the total cost of Oakville?

**Ms. Halyna Perun:** Certainly at the time that the MOU was developed. You've had discussions here about the MOU. At that time of the negotiations around that particular, there were two MOUs that were finalized on September 24 and posted. At that time, there were a number of costs articulated in those MOUs.

**Mr. Victor Fedeli:** Colin Andersen, Butler, Killeavy and Lyle all said that the government was at the table and signed the MOU. Were you literally and physically at the table?

**Ms. Halyna Perun:** There are many tables there, if I may tell you this.

**Mr. Victor Fedeli:** I'm going to get a yes or a no from you one of these times; I just know it. I'm going to keep pushing.

So were you at the table when they speak of being at the table, negotiating?

**Ms. Halyna Perun:** I was a participant at a particular table. They were very complicated deals—

**Mr. Victor Fedeli:** That's okay. I understand. You were at the table, in the room, at one of those many tables. When Colin Andersen said that everybody knew—everybody knew what they were talking about; \$40 million were the sunk costs, plus there were other costs.

**Ms. Halyna Perun:** But they were sort of negotiating tables; then basically the two MOUs came together. The deals—

**Mr. Victor Fedeli:** Would most participants have seen both MOUs?

**Ms. Halyna Perun:** Then both MOUs were presented to the minister and the deputy at a very early-morning briefing of Monday, September 24.

**Mr. Victor Fedeli:** The briefing that you spoke about, where Colin Andersen swore under oath here that everybody knew that there were additional costs: Is it safe to say—well, why don't I just ask you? Will you comment on that? Did everybody know there were additional costs?

**Ms. Halyna Perun:** I'm not sure what he means by "everybody," but—

**Mr. Victor Fedeli:** He was talking about the people involved—ministry, staff.

**Ms. Halyna Perun:** Certainly I was aware that there would be other costs. I may not really have been attuned to what those costs were or the numbers, but I was aware personally that there were other costs because they were articulated in the MOU.

**Mr. Victor Fedeli:** You would have known that the total cost of the cancellation was not \$40 million?

**Ms. Halyna Perun:** I believe the sunk cost—

**Mr. Victor Fedeli:** No, that's not what I asked you. I asked you: Were you aware that the total cost was not \$40 million?

**Ms. Halyna Perun:** It would have been more than \$40 million.

**Mr. Victor Fedeli:** That's fair. Who else would have been aware of that? Give me the long list—or a short list, for that matter.

**Ms. Halyna Perun:** I think ultimately you're asking whether people such as the minister and the deputy were aware.

**Mr. Victor Fedeli:** Yes, that's exactly what I'm asking you.

**Ms. Halyna Perun:** You've heard from Deputy Imbrogno himself that he knew.

**Mr. Victor Fedeli:** I'm sorry?

**Ms. Halyna Perun:** I think you heard that he knew and you also heard from Minister Bentley at the time when he was here that he also knew.

**Mr. Victor Fedeli:** I'm not quite sure if this is hypothetical or not, but why do you think everybody continues to say the total cost is \$40 million when everybody knows it's not?

**Ms. Halyna Perun:** I can't say.

**Mr. Victor Fedeli:** Okay. That's fair enough. If you can't say, you can't say.

**The Chair (Mr. Shafiq Qaadri):** That's not hypothetical.

**Mr. Victor Fedeli:** It's not really hypothetical? I didn't know what the word for that was.

When did you first become aware of Oakville? You told us that it was right around the time when you first got hired, right? Is that what I heard?

**Ms. Halyna Perun:** When I first arrived to the branch, around that time, the first encounter I had with the fact that the government was moving forward with the cancellation of the plant was in commenting on communications materials.

**Mr. Victor Fedeli:** Okay. I want you to go to document 10. This is a May 27 document now.

**Ms. Halyna Perun:** Document 10, May 27. Yes.

**Mr. Victor Fedeli:** This is again from you: "I was called in ... to meet with ADAG"—

**Ms. Halyna Perun:** That's the Assistant Deputy Attorney General.

**Mr. Victor Fedeli:** How do you pronounce her first name again?

**Ms. Halyna Perun:** MAL-uh-ha.

**Mr. Victor Fedeli:** —"Malliha Wilson at the end of day.... She wanted to let me know that counsel for TCE requested a meeting with her and our counsel John Kelly

to discuss the matter. The meeting is scheduled for Wed. June 1. Malliha was asked to proceed with the meeting by MAG MO. I am assuming that Energy MO and PO—would PO be the Premier's office?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** —“are aware—but we should probably advise them. Apparently, TCE counsel are working on a draft of the statement of claim and will be sharing it with Malliha and John next week. Please let me know if you'd like us to send a note to Craig on this as a head's up.” Who's Craig?

**Ms. Halyna Perun:** That would be Craig MacLennan.

**Mr. Victor Fedeli:** Do you know if you sent a note to Craig? This is on May 27 of 2011.

**Ms. Halyna Perun:** I actually don't know if I sent a note. Oh, it's in here. Yes, there it is. So I did.

**Mr. Victor Fedeli:** The next page—

**Ms. Halyna Perun:** Oh, and this was a real problem, because it was sent to the wrong Craig.

**Mr. Victor Fedeli:** Who did you send it to?

**Ms. Halyna Perun:** Well, you see at the top. It's “Craig McLellan (MGS).”

**Mr. Victor Fedeli:** I'm sorry, could you start over?

**Ms. Halyna Perun:** There are a few other emails, because this was intended to be sent to Craig MacLennan but it was sent to someone else in error and then it was retracted.

**Mr. Victor Fedeli:** Did you ever send it to the real Craig MacLennan?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Yes, you did?

**Ms. Halyna Perun:** Yes, I did.

**Mr. Victor Fedeli:** You didn't know that he was screened off the file a month earlier.

**Ms. Halyna Perun:** As far as I was aware, he wasn't screened off at this time.

**Mr. Victor Fedeli:** He swore under oath that he was screened off in April. This is a May 29 email.

**The Chair (Mr. Shafiq Qaadri):** It's not a deliberate interruption, Mr. Fedeli.

**Mr. Victor Fedeli:** Damn, I was just rolling.

**The Chair (Mr. Shafiq Qaadri):** And now to the NDP.

**Mr. Peter Tabuns:** Thank you, Chair. Just to complete that, as far as we know he was screened off and told to have nothing to do with this file in April. This is May 29.

**Ms. Halyna Perun:** I think that the issue of whether—his screening was later than that. He may not have recalled it, but it was in June.

**Mr. Peter Tabuns:** Really?

**Ms. Halyna Perun:** But I don't know for sure. In fact, I also don't know 100%, but I thought that it was later.

1750

**Mr. Peter Tabuns:** We can double-check that.

Going back to this question of briefing the minister on the memorandum of understanding, were the scale of cost and the buckets of cost discussed in that briefing?

**Ms. Halyna Perun:** I think the purpose of the briefing was to take the minister and the deputy through the entire—both MOUs. I don't recall, truly, what costs were referred to at that particular—so in terms of answering your question, the scale of costs—

**Mr. Peter Tabuns:** Or range.

**Ms. Halyna Perun:** —or range, I don't know whether they actually went into that amount—that kind of detail—but the types of costs would have been identified. I'm not sure if I'm making myself clear.

**Mr. Peter Tabuns:** I think you are. You're saying that the categories of costs were identified—

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** —and you don't have a recollection of the minister asking what the range—

**Ms. Halyna Perun:** He may have, but I don't recall. Truly, I don't recall.

**Mr. Peter Tabuns:** Were you there for the whole briefing?

**Ms. Halyna Perun:** Yes, I was.

**Mr. Peter Tabuns:** I would have thought the numbers and the scale of costs for someone signing off on this very high profile issue were something that would have struck everyone in the room as necessary.

**Ms. Halyna Perun:** Certain costs and certain numbers resonated, but others didn't with me. I wasn't—

**Mr. Peter Tabuns:** Do you remember the discussion of the sunk costs, then?

**Ms. Halyna Perun:** Yes. If I may, the sunk costs and the costs of the turbines—those kinds of costs—were identified costs, and they would have been noted. Additionally, you know, there are two particular schedules: schedule A, which was the OPA agreement that identified gas delivery and management service costs and that kind of thing—the NRR; and then schedule B, which was the reimbursement agreement, also noted the \$210-million cost for the gas turbines, the \$40-million sunk costs and also there was a \$50-million break fee.

**Mr. Peter Tabuns:** Right.

**Ms. Halyna Perun:** So those are identified. I don't know in how much detail they were discussed at the briefing, but I'm sure that they were reviewed.

**Mr. Peter Tabuns:** So when the gas delivery and management cost was noted, no one asked about the scale of that cost or the range of that cost?

**Ms. Halyna Perun:** I can't say there was no one. It simply didn't resonate with me.

**Mr. Peter Tabuns:** Okay. So you don't have a recollection.

**Ms. Halyna Perun:** I don't have a recollection of that, but it doesn't mean it wasn't discussed.

**Mr. Peter Tabuns:** Okay. On another matter, then, were you involved in the meeting with Michael Barrack and TransCanada Energy counsel?

**Ms. Halyna Perun:** This is the meeting with—can you tell me particularly which meeting you're talking about?

**Mr. Peter Tabuns:** There was a meeting that John Kelly took notes of. I think the PC document—



**Ms. Halyna Perun:** There was a meeting that I attended with John Kelly and others with Mike Barrack.

**Mr. Peter Tabuns:** If my colleagues don't mind, it's PC document 12: "Notes to file—Meeting with Michael Barrack and John Finnigan, June 2, 2011." You are listed as being present that time.

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** Do you recollect that meeting?

**Ms. Halyna Perun:** Yes, I do.

**Mr. Peter Tabuns:** Do you believe that TransCanada felt they had a deal with the Premier's office?

**Ms. Halyna Perun:** I didn't feel or believe anything. I think this is what was being told to us.

**Mr. Peter Tabuns:** Interesting.

**Ms. Halyna Perun:** It was a meeting with someone else telling us about—

**Mr. Peter Tabuns:** Did you get a sense that they might be trying to mislead you?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** But you neither believed nor disbelieved what—

**Ms. Halyna Perun:** No. It was something that was conveyed to us.

**Mr. Peter Tabuns:** Did your legal department at any point provide legal advice to the Premier's office suggesting it should promise to make TransCanada whole?

**Ms. Halyna Perun:** Sorry, can you repeat the question?

**Mr. Peter Tabuns:** Did your legal department ever provide legal advice to the Premier's office on the deal with TransCanada, any advice as to whether or not TransCanada should be made whole or kept whole?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** I'm going to go back to our document, page 4.

**Ms. Halyna Perun:** Sorry, is this your document?

**Mr. Peter Tabuns:** Yes—no. My apologies, Halyna. I don't see it in our package. I will just ask.

*Interjections.*

**Ms. Halyna Perun:** Oh, I do have this. This is the legal opinion.

**Mr. Peter Tabuns:** Right. Page—

*Interjection.*

**Mr. Peter Tabuns:** Yes, too much paper is right.

On page 4, there's a brief written by Malliha Wilson. She writes, "We are of the view that a court would be strongly inclined to"—

**Ms. Halyna Perun:** Sorry.

**Mr. Peter Tabuns:** Do you have that before you?

**Ms. Halyna Perun:** Page 4, okay.

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** And where are you?

**Mr. Peter Tabuns:** Under "Waiver of article 14.1," second paragraph.

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** "We are of the view that a court would be strongly inclined to admit at least some of the evidence of the negotiations between TransCanada Enterprises, the Ontario Power Authority and the Premier's

office. The parties may also have conducted themselves in a manner inconsistent with any continued reliance on article 14.1." That was the article that protected the Ontario Power Authority from being sued for lost profits. Is that an opinion you agree with?

**Ms. Halyna Perun:** I would have no reason not to agree with the crown law office-civil's view on this. This is an opinion that was developed by crown law office-civil. We work very closely and collaboratively with that office, and I would definitely be relying on their view.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** In fact, giving up on a big piece of protection, that protection against claim for profits, would have substantially weakened the province's position. Is that correct?

**Ms. Halyna Perun:** That's correct.

**Mr. Peter Tabuns:** Do you have any idea why the decision was made to abandon that very important piece of defence?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** It appears that you were regularly part of phone calls touching on Vapour and Vapour-lock. Were chiefs of staffs or ministers' office staff ever part of those calls?

**Ms. Halyna Perun:** They could have been.

**Mr. Peter Tabuns:** Which political staff did you regularly brief, if any? Did you brief people in the Premier's office?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. How are you holding up, Halyna? Are you all right?

**Ms. Halyna Perun:** Okay. It's a very long hour and a half, I must say. You must feel the same.

**Mr. Bob Delaney:** Well, you're nearly at the end. It's almost in sight, now.

I have just a few questions regarding the Oakville plant. The memorandum of understanding for the Oakville relocation: Did that also include additional savings? 1800

**Ms. Halyna Perun:** It could have. I understand that there was a lower NRR reached, but again, I don't recall the actual number. Sorry.

**Mr. Bob Delaney:** So, just for clarity, when you refer to a lower NRR, you mean a lower net revenue requirement.

**Ms. Halyna Perun:** Right.

**Mr. Bob Delaney:** And in this case, from the Lennox site, right?

**Ms. Halyna Perun:** Right.

**Mr. Bob Delaney:** Okay. Some of the witnesses who have testified before the committee regarding the meetings between the Premier's staff and TransCanada Energy—their testimony lines up with notes that we've seen taken from their interviews with you and your colleagues on the file.

For example, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin confirmed, "We were not authorized to ... and we

did not engage in” any negotiation. Chris Breen from TransCanada confirmed that they were not negotiating directly with the company.

We also know that no offers were made and no deals were reached during these meetings. The former Deputy Minister of Energy, David Lindsay, testified, and I’ll use his words: “I don’t think they actually had a deal. If they had a deal, why were we going through all this process?” Would you agree with that assessment?

**Ms. Halyna Perun:** Those were former Deputy Lindsay’s thoughts. I don’t have any reason not to agree with him.

**Mr. Bob Delaney:** Okay. Chair, I think that is it for the government. We are done. Thank you very much for—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you very much. If you’ll go to PC doc 13 now.

**Ms. Halyna Perun:** Okay.

**Mr. Victor Fedeli:** We’re back at those. Got that?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Do you see where I’m reading the first sentence? “The meeting is ‘agenda setting’—Jenn won’t be able to elaborate.” Do you see that?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** “This is all Craig.” Which Craig are they referring to?

**Ms. Halyna Perun:** Craig MacLennan, I presume.

**Mr. Victor Fedeli:** Okay. Again, this is now on June 2, 2011. Turn the page. Go to page 2 of 5. The fourth line from the bottom, if you will: “Conference call for this evening for tomorrow morning at 10 (with OPA, DM, minister’s office and Sean Mullin from PO).” Is that Sean Mullin from the Premier’s office?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** And you’ll note that that date is June 2, 2011. Go a couple of pages in, then, please, to document 14. Third paragraph: “Deputy Lindsay spoke to energy’s chief of staff who then spoke to Sean Mullin.” Note that the date is June 6. Do you know that Sean Mullin was screened off the file in April as well?

**Ms. Halyna Perun:** I don’t know that.

**Mr. Victor Fedeli:** They swore under oath here that they were screened off. Both MacLennan and Mullin swore under oath that they were screened off. In fact, they couldn’t give us numbers of a late April decision, because they had been screened off by then. They both swore under oath. Do you have any comment about that, communicating with them after they were screened off?

**Ms. Halyna Perun:** I’m not sure that they were actually screened off at that time.

**Mr. Victor Fedeli:** Yet they swore under oath that they were.

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. We’ll get to them later, then.

So now I want to turn your attention—you don’t have this document, because you won’t need it. We’re just going to talk about the document this whole committee

was given. I don’t know how to pronounce it—the law firm of Lenczner Slaght?

**Ms. Halyna Perun:** “Lenczner Slot,” I think, yes.

**Mr. Victor Fedeli:** This is a presentation to the Ontario Power Authority board, and it talks about the Jesse Kulendran discussion.

**Ms. Halyna Perun:** Okay.

**Mr. Victor Fedeli:** I’m just going to give you some names and dates. “On August 22, 2012, Halyna Perun, Ministry of Energy, legal, contacted Mike Lyle to request a meeting to discuss the OPA documents.” Would you agree?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. August 22, 2012 meeting: “Ziyaad Mia contacts Halyna Perun, who advises:

“(1) come to fourth floor at Hearst;

“(2) meet with Jesse Kulendran;

“(3) bring documents;

“(4) Halyna will try to be there; and

“(5) issues with documents.”

Does that ring a bell?

**Ms. Halyna Perun:** I presume that I called—wait a second. Did I call Ziyaad? Is that—

**Mr. Victor Fedeli:** This one says “Ziyaad Mia contacts Halyna Perun.”

**Ms. Halyna Perun:** Oh, he calls me. Well, it could be.

**Mr. Victor Fedeli:** Do you recall those—

**Ms. Halyna Perun:** I don’t recall having a conversation with him, but I don’t say that I didn’t.

**Mr. Victor Fedeli:** Okay. So you didn’t say to Ziyaad Mia, “Come to the fourth floor at Hearst”?

**Ms. Halyna Perun:** I could have.

**Mr. Victor Fedeli:** “Meet with Jesse Kulendran”?

**Ms. Halyna Perun:** He did meet with her on the fourth floor, so I presume—

**Mr. Victor Fedeli:** “Bring documents”?

**Ms. Halyna Perun:** I presume that I told him that. I’m not saying that I didn’t; I just simply don’t remember that I actually had that conversation.

**Mr. Victor Fedeli:** “Bring documents”? That’s you?

**Ms. Halyna Perun:** If it’s in that, and he said that’s what I said, then I probably did.

**Mr. Victor Fedeli:** Okay. “Halyna will try to be there.” For some reason, you weren’t at the meeting.

**Ms. Halyna Perun:** I wasn’t at the meeting.

**Mr. Victor Fedeli:** “Issues with the documents”? Are you acknowledging that? He’s saying that when he contacted you, you advised that there are issues with the documents.

**Ms. Halyna Perun:** My recollection is that there was a need or a desire to have a meeting with the OPA to review certain documents. If he characterized it as issues, that’s—

**Mr. Victor Fedeli:** That’s not me characterizing. I’m reading the lawyer’s report.

**Ms. Halyna Perun:** That’s the lawyer writing about how Ziyaad characterizes it.

**Mr. Victor Fedeli:** “On August 22, a meeting had been called by Halyna Perun, and it was understood to be



a meeting in which the position of ministry legal on document disclosure was being communicated.” Does that make sense? Is that accurate? I’ve only got three minutes, so we’ve got to roll here.

**Ms. Halyna Perun:** I’m not aware of—I wouldn’t characterize it that way.

**Mr. Victor Fedeli:** The note here—it says, “The OPA was provided the following guidance:

“The documents need to be within the ranges identified in the motion.

“The documents have to be correspondence.

“They must refer to Oakville and Mississauga.

“SWGTA was not considered a proxy for Oakville.”

Are those your instructions or your understanding?

**Ms. Halyna Perun:** No. Again, it goes to basically what Ziyaad and Kristin understood happened at that particular meeting and what Jesse has indicated happened at that particular meeting.

**Mr. Victor Fedeli:** So—

**Ms. Halyna Perun:** But I just wanted to say, in terms of our legal advice in terms of the scope of the motion, it was basically that the motion addressed correspondence, emails, attachments to emails and—

**Mr. Victor Fedeli:** So were the instructions to OPA not to include anything that wasn’t correspondence or attachments?

**Ms. Halyna Perun:** No. That would not have been my communication.

**Mr. Victor Fedeli:** It says here afterward—that is the communication in this lawyer’s document, the presentation to the OPA. It says—

**Ms. Halyna Perun:** About something that they understood at that particular meeting.

**Mr. Victor Fedeli:** “Colin Andersen spoke to the deputy minister to discuss the ministry’s approach.” Because they were different; the ministry’s approach was different than OPA’s. “Deputy confirms that legal has reviewed.” Was that you?

**Ms. Halyna Perun:** The approach that the ministry took on its own production—

**Mr. Victor Fedeli:** The OPA production.

**Ms. Halyna Perun:** On the OPA production would not be pursuant to my legal advice. It would be pursuant to their legal advice.

**Mr. Victor Fedeli:** It says that “the approach was applied.” What they’re talking about is the approach being that anything that has SWGTA doesn’t belong in there. Anything that isn’t correspondence doesn’t belong in there. As a result of that meeting that you instructed them to be at, the approach was applied. Certain documents were removed as a result. It was understood that non-privileged documents were to be released October 27 and privileged documents were to be disclosed in camera, and it never occurred. So are you saying that you did not instruct Jesse Kulendran to instruct the OPA how to manage the documents?

**Ms. Halyna Perun:** I didn’t instruct her to instruct—

**Mr. Victor Fedeli:** What did you send her over there to do, then?

**Ms. Halyna Perun:** So, if I may—

**Mr. Victor Fedeli:** Yes. Please.

**Ms. Halyna Perun:** The minister’s office called to ask me to arrange this meeting, so I arranged it. There was an urgency to it happening—

**Mr. Victor Fedeli:** What was the purpose of it?

**Ms. Halyna Perun:** To meet with the OPA so that they could understand—sort of a check-in, I guess, to make sure that they understood how the ministry was responding to the document request and to sort of do a check-in with them. So that’s the—

1810

**Mr. Victor Fedeli:** So this urgent meeting—what would the difference have been between how you did it and how—

**Ms. Halyna Perun:** I think the urgency was in the fact that there was an expectation that all the documents needed to be organized for production that same night. In fact, ultimately, we ended up having a couple of more days. So there was urgency in terms of meeting with the OPA that morning.

**Mr. Victor Fedeli:** It says here you responded: “The ministry is in the process of reviewing documents.... You will be notified once a determination has been made as to how the disclosure request will be responded to.”

What did you tell them to do differently?

**Ms. Halyna Perun:** Sorry, can you just—sorry, I’m not sure. Can you just read that again?

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Victor Fedeli:** It says, “The ministry is in the process of reviewing documents with a view to responding to the disclosure request. You will be notified once a determination has been made as to how the disclosure request will be responded to.”

**Ms. Halyna Perun:** Is that my email to—

**Mr. Victor Fedeli:** Supposedly. Again, I’m reading from the lawyer’s packet here.

**Ms. Halyna Perun:** I think that was an email that I sent to Mike Lyle, who was the general counsel at the OPA at the time that the motion was first brought forward. I forwarded the motion to him and I basically told him that we would be responding, and I would assume that they would be responding too, and then I would be in further communication about that.

**Mr. Victor Fedeli:** So you never asked Jesse Kulendran to deal with those issues with the documents that Ziyaad Mia talked about?

**Ms. Halyna Perun:** I called—I arranged the meeting, but I didn’t instruct her, and I don’t think she—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli, and once again, not an intentional interruption, but the time has expired.

Ms. Perun, I thank you on behalf of the committee for your testimony and your presence.

## COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qadri):** Just before we conclude, there is an issue here before the committee with reference to documents that are provided to the committee in response to a motion, and it goes as

follows—and I welcome Mr. Trevor Day, who is also here to ensure that we follow procedure, along with our current Clerk.

When reviewing Hansard from our last meeting regarding the documents the committee has received from the Ministry of Finance, the Premier's office and Cabinet Office, the committee wanted to receive all the documents, including the confidential ones. I inform the committee that those documents are now here, ready for distribution, one per caucus. You'll determine, I think, how many thousands of documents are on this USB key. However, there are some documents that have been flagged as confidential/commercially sensitive, and the cover letter is from the Deputy Minister of Finance.

The problem or issue before the committee is that we are, of course, prepared, as is the committee's right, to distribute those documents. There are some several thousand. I would, I think, just at this moment, ask respectfully that this is for your own internal review and not to be made public at present, because there is still, I guess you could say, a ruling or a decision, because there are four items flagged. They are a reference to the Ring of Fire; green energy investment; the Ford Oakville plant, as in, I guess, the car plant; and Cisco Systems, which have somehow been taken up in this document dump but are not relevant or responsive.

Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, there was a line on the bottom of that letter that also said "any previous information that the committee had." It was on the bottom of the front page. They want that kept confidential, but our ruling already stands over those. I couldn't agree with that portion, because those documents—you can't put that toothpaste back in the tube. Those are gone.

**The Chair (Mr. Shafiq Qaadri):** Fine. Are there any comments on this issue? Mr. Delaney.

**Mr. Bob Delaney:** Chair, first of all, let me, on this one rare occasion, agree with Mr. Fedeli: That toothpaste has gone out of the tube. But with regard to this one, may I suggest that as the committee at the moment doesn't have an indication of what these documents are, what their nature is, that we defer the discussion on this matter until the next meeting?

**The Chair (Mr. Shafiq Qaadri):** I'm willing to entertain that. Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, so you're prepared at the moment to turn that disk over to us. We can release all but those four. Is that what you're asking? On our honour, to keep those four—is that what you're asking? As you've given us other confidential documents?

**The Clerk of the Committee (Ms. Tamara Pomanski):** If you were to open up the USB sticks, there are folders that will say "confidential." But looking at this, I'm not sure—I wouldn't be able to tell you exactly Cliffs Resources or green energy investment—

**Mr. Victor Fedeli:** We all understand those, to be quite frank.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Okay. So if you were to look at the USB sticks, they are separated by a folder that says "confidential" on each USB stick. That's what was sent to us as confidential.

**Mr. Victor Fedeli:** I would suggest, Chair, that you issue the document, the USB sticks, and as you have issued us other confidential material, we could hold those four documents in confidence until we have a further discussion.

**The Chair (Mr. Shafiq Qaadri):** Is that agreeable to the committee?

**Mr. Peter Tabuns:** The ones are related here—

**Mr. Victor Fedeli:** The four—

**Mr. Peter Tabuns:** —but not to the gas plant matter.

**Mr. Victor Fedeli:** Yes.

**The Chair (Mr. Shafiq Qaadri):** That's what we're being told, yes.

**Mr. Victor Fedeli:** The four identified items on page 2 or 3—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, comments?

**Mr. Bob Delaney:** I have no objection to that, Chair, as long as it's understood that, at this point, those documents rest with us on our honour as MPPs and remain confidential, and we'll discuss it at a future time.

**Mr. Victor Fedeli:** That's fine.

**Mr. Bob Delaney:** I'm okay with that.

**The Chair (Mr. Shafiq Qaadri):** And we won't go through the protocol of signed signatures this time.

**The Clerk of the Committee (Ms. Tamara Pomanski):** I just want to get this clear. What I'm clear on is that I'm going to give you these documents, one per caucus, and the ones that are identified as confidential, you will keep those to yourselves until the committee decides what to do with them?

**Mr. Victor Fedeli:** Yes.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Mr. Delaney? Everyone's agreed with that?

**Mr. Bob Delaney:** I'm fine with that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, then, to the members of the committee, and thanks to our Clerk, Ms. Pomanski, and Mr. Day. Committee is adjourned.

*The committee adjourned at 1816.*



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